

1 BEFORE THE

2 FEDERAL ENERGY REGULATORY COMMISSION

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5 IN THE MATTER OF: : Docket Number

6 SAN DIEGO GAS & ELECTRIC COMPANY : EL00-95-000

7 Complainant, :

8 v. :

9 SELLERS OF ENERGY AND ANCILLARY :

10 SERVICES INTO MARKETS OPERATED :

11 BY THE CALIFORNIA INDEPENDENT :

12 SYSTEM OPERATOR AND THE :

13 CALIFORNIA POWER EXCHANGE :

14 Respondents. :

15 :

16 INVESTIGATION OF PRACTICES OF : Docket Number

17 THE CALIFORNIA INDEPENDENT : EL00-98-000

18 SYSTEM OPERATOR AND THE :

19 CALIFORNIA POWER EXCHANGE :

20 :

21 PUBLIC MEETING IN SAN DIEGO, : Docket Number

22 CALIFORNIA : EL00-107-000

23 :

24 CALIFORNIA POWER EXCHANGE : Docket Number

1 CORPORATION : ER00-3461-000

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CALIFORNIA INDEPENDENT SYSTEM : Docket Number

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OPERATOR CORPORATION : ER00-3673-000

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San Diego Concourse

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Copper Room

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202 C Street

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San Diego, California

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Tuesday, November 14, 2000

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The above-entitled matter came on for public

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conference, before the Commission, pursuant to notice, at

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8:00 a.m.

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BEFORE:

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CHAIRMAN JAMES J. HOECKER

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COMMISSIONER WILLIAM L. MASSEY

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1 PANEL OF GOVERNMENT OFFICIALS:

2 HONORABLE BOB FILNER

3 United States Congressman

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5 MATTHEW KAGAN

6 Staff Representative

7 Senator Barbara Boxer

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9 MIKE RICHMOND

10 Staff Representative

11 Senator Diane Feinstein

12

13 CATO CEDIOO

14 Staff Representative

15 Congressman Duncan Hunter

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17 HONORABLE STEVE PEACE

18 California Senate

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20 DONNA SMITH

21 Field Representative for Assemblywoman

22 Congresswoman-Elect Susan Davis

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PANEL OF GOVERNMENT OFFICIALS (CONTINUED):

HONORABLE DIANNE JACOB

Chairwoman

San Diego County Board of Supervisors

HONORABLE GEORGE STEVENS

Councilman

City of San Diego

HONORABLE LORI HOLT PFEILER

Mayor of Escondido

DENISE MORENO DUCHENY

Assemblymember, 79th District

1 PROCEEDINGS

2 CHAIRMAN HOECKER: Ladies and gentlemen, will you
3 please take your seats. We would like to begin. Please
4 take your seats. Thank you very much. We will go on the
5 record at this time.

6 Good morning. It's a pleasure to be back in
7 San Diego. This is a hearing in FERC Docket Number
8 EL00-95-000, and is our second hearing in San Diego this
9 fall, the first being a proceeding designed to reshape
10 California's ailing power markets and remedy the pricing
11 problems that afflict the state, in particular, San Diego,
12 this past summer.

13 The FERC issued an order on November 1st. Those
14 of you who are not familiar with it, I urge you to please
15 read it and give us your views. If you are not speaking
16 today, you are welcome to file written comments with the
17 Commission by November 22nd.

18 The order proposes numerous near- and long-term
19 corrective measures that we think will lead to a more
20 rational productive and beneficial power market in
21 California in the future.

22 On November 9, last week, we had nine hours of
23 hearings like this one in Washington to discuss this issue
24 as well. We are very happy to give some of you a second

1 bite at the apple. But we are also very interested,

1 primarily interested in hearing from those of you who were
2 either unable to make the trip to Washington or who would
3 simply like to hear these proceedings.

4 This is a very important issue for the FERC. It
5 is a critical issue for San Diegans -- we understand
6 that -- but it also portends some important developments in
7 the evolution of competitive power markets across the
8 country. The eyes of state officials, utility companies
9 and consumer advocates across the country are on this
10 hearing and this proceeding.

11 We look forward to gathering as much information,
12 as much of your views, as we possibly can gather as we move
13 forward and make our decision. We are very hopeful that we
14 can make a final decision in this proceeding by the end of
15 the year.

16 However, I think it is well to remember that this
17 order in this case is not the end of our consideration of
18 California's problems or of the bulk power markets in the
19 West, but part of a series of larger issues and proceedings
20 that is aimed at developing wholesale electric markets that
21 will be more functional in the 21st century.

22 Many of you are aware that this industry is
23 changing fundamentally and has already changed in many
24 ways, both in California and elsewhere. And we find that

1 regulation and state/federal law in many instances is

1 running to catch up. And this transition is going to take
2 a while. It will take all our cooperation, all our
3 goodwill and the best possible information that we can
4 gather to make this a rational transition that does not
5 impose undue risks on consumers.

6 This morning I would like to say that
7 Commissioners Hebert and Breathitt were unable to join us
8 due to scheduling conflicts. However, they wanted me to
9 mention that they are just as interested and focused on
10 this as are we, and I know that they will be reviewing the
11 record of this proceeding today.

12 We are here to listen and we are here to ask some
13 questions if we deem it appropriate, but it seems we have a
14 very full dance card this morning, so we are going to try
15 to move this along pretty quickly so that everyone has a
16 chance to voice their opinions about this critical issue.

17 With me at the table this morning on my right is
18 Douglas Smith, the general counsel of the FERC. On my far
19 left, David Boergers, the secretary of the Commission and
20 on my immediate left, my colleague, Commissioner Massey.

21 Commission, do you have some comments at this
22 point?

23 COMMISSIONER MASSEY: Thank you, Mr. Chairman. I
24 would just briefly associate myself with your remarks. I

1 am here to listen and to inquire and continue this critical

1 dialogue with Californians about electricity markets, and
2 it is my privilege to be here today.

3 CHAIRMAN HOECKER: Thank you. We will begin this
4 morning with Congressman Bob Filner, with his opening
5 comments. Then we will just move down the table, if that
6 is all right.

7 REPRESENTATIVE FILNER: Thank you. I am Bob
8 Filner, Congressman for the 50th District of California.
9 On behalf of all of us here in the region, we thank you for
10 being here, for responding to our requests that we have
11 input here in San Diego. We thank you for the attention
12 that you have given to this issue.

13 You know, and we don't have to repeat, this was
14 and still is a crisis which has cost our region jobs.
15 Businesses have closed and will close in the future. Many
16 citizens have had to choose between buying food or paying
17 rent or their electricity bill, and that is tragic. We
18 certainly approve of many of the measures that you have
19 recommended in the order along the lines of the
20 restructuring and giving more power, both to more
21 independent boards and to your Commission, so we thank you
22 for that.

23 You know that many of us here are still
24 disappointed in the final outcome of your order. If I may

1 use the parlance of the day, we are demanding an immediate

1 recount. We want a recount of your report. We want a real
2 investigation. You have indicated you have not finished.
3 We want you to use all the powers that you have for taking
4 depositions, for issuing subpoenas, for getting to the
5 bottom of this situation.

6 We want you to order refunds. We want you to
7 order retroactive rate decreases back to the time of
8 so-called deregulation or when deregulation really took
9 effect in June, and make sure that our consumers who are
10 facing a mounting debt here in San Diego, to small
11 businesses, that they face with fear and panic and can look
12 to you only for that refund.

13 We ask you also to look at the financial markets
14 that have played a role that has not been discussed too
15 openly or knowledgeably by either the press or by
16 yourselves. What has happened to those contracts that
17 generated sales, marketers and brokers, what did the
18 financial markets do to that, how do they speculate on
19 these instruments, and therefore, drive up the price for
20 those of us here in San Diego.

21 We believe here -- I use this word advisedly --
22 that the electric generators and marketers have been
23 criminal in their actions, that they have responsibility
24 for manipulating the market and have engaged in antitrust

1 activity and must be held accountable and responsible.

1 You were very cautious in your report. You have
2 to worry about your fiduciary responsibilities and
3 possibilities of lawsuits, et cetera. I think if I, as an
4 amateur, know how electricity was laundered in this case or
5 how production was withheld, probably illegally, from the
6 market or how the capacity of transmission lines was
7 artificially manipulated -- I know that as a layman and
8 amateur -- you-all should be able to figure that out as
9 experts, with your investigatory powers. So we need you to
10 find, to place the blame squarely where it belongs in this
11 situation so then other actions can take place.

12 In regard to retroactive roll-backs and refunds,
13 your report was a little bit ambiguous on this. You claim
14 you do not have the authority to do this. You also state
15 that there is not a precedent for this situation that has
16 been tested.

17 I would take the authority that I think you have
18 and order that. But if you need legislative remedies which
19 you, I think, Chairman Hoecker, asked for in your press
20 conference of November 1st as I read it, there is
21 legislation that I authored, including HR 5626, which gives
22 you the authority you ask for in your report.

23 It says that in the situation where you have
24 found rates to be unjust and unreasonable, as you have

1 found, and where you have not previously approved those

1 rates -- in this case so-called market-based rates or
2 tariff rates you never approved -- my bill as you know, you
3 have, your staff has had that and worked with it -- I think
4 that bill gives you the authority to do exactly what you
5 asked for in your report, to make sure that our consumers
6 here, our small businesses here in San Diego do not suffer,
7 do not become the victims of a manipulated market.

8 I urge you not to stand on the sidelines. As an
9 independent agency, you cannot lobby Congress but you can
10 say whether this bill is good or bad or whether it meets
11 the needs you have. You can express your opinion. If you
12 think that it's deficient in some respect or does not give
13 you the authority or contains something that is wrong, let
14 us know. You can get engaged in that process even though
15 you have this independent status as a regulatory
16 commission. So we want you to take part in that process to
17 the limits that you can as an independent agency.

18 We think your soft cap is too high. We want you
19 to look at the way the financial markets have treated this
20 basic commodity to our citizens. I don't know if you can
21 order, or we can order in Congress, a direct sale of
22 electricity to consumers without going through all these
23 middle people who have tremendous ability to manipulate our
24 markets, but we should be looking at that.

1

So we thank you for understanding the crisis

1 here. We want you to understand the pain and fear that
2 people are looking toward the future. We still are faced
3 here in San Diego with a situation of \$600 million being
4 sucked out of our economy in those four months by marketers
5 and generators. People are still happy to consider that as
6 a debt even though it's in a balancing account that has
7 been ordered by the state. They fear that on their
8 personal and business records. As you know, \$6 billion was
9 sucked out of this economy in four months.

10 You need to assess that responsibility, you need
11 to assess the problems and come up with answers. If you
12 have to do it in cooperation with the Congress, we are
13 there and willing to work with you. HR 5626 gives you the
14 authority. I hope you won't be passive in our so-called
15 lame duck session, and instead, take that authority.

16 CHAIRMAN HOECKER: Thank you.

17 Matthew Kagan, is that right, from the office of
18 Senator Barbara Boxer.

19 MR. KAGAN: Thank you. I am Matthew Kagan,
20 Southern California director for Senator Barbara Boxer.

21 This is the second time I have appeared before
22 the Commission. The Senator had been scheduled to attend,
23 but the Senate unexpectedly stayed in session, and she sent
24 me with her statement. This is the statement she would

1 have read had she been able to this morning.

1 Mr. Chairman and members of the Commission, I
2 want to thank you for responding to my request to hold this
3 conference in San Diego. As I expressed to the Chairman in
4 my November 2nd letter, I believe it is essential for
5 Commissioners to hear from ratepayers firsthand in order to
6 fully understand the depth of the community's outrage over
7 this summer's energy crisis.

8 In its staff report and draft order of November
9 1st, there was produced a wealth of information for
10 San Diego to consider. I believe the Commission accurately
11 diagnosed the problem in San Diego. I wholeheartedly
12 agree, electricity rates were unfair and unreasonable
13 during peak summer months.

14 Unfortunately, I believe the remedies proposed
15 neither provide appropriate compensation to San Diego
16 residents nor establish the procedures needed to prevent
17 this kind of price-gouging in the future.

18 I do want to make clear, Mr. Chairman, I
19 appreciate the many efforts of the Commission and staff on
20 this issue. I have reviewed the draft remedies and staff
21 report carefully, and it's obvious the Commission has
22 approached the issue with the seriousness it deserves. The
23 report and proposed order are important first efforts.

24 However, echoing Congressman Filner's statement,

1 as recent events in Florida have demonstrated, even

1 good-faith first efforts sometimes require a little
2 reconsideration. On behalf of San Diego electricity
3 ratepayers, we urge that reconsideration now.

4 As I understand the report, it acknowledges
5 prices were unjust and unreasonable, and strongly implies
6 utilities used their market power to gouge San Diego
7 consumers. Yet the Commission does not seek refunds now,
8 but instead places sellers on notice they may be subject to
9 refund liability the next time they gouge consumers.

10 I have worked closely with Congressman Filner on
11 this issue. Senator Boxer and Congressman Filner have
12 discussed it and do not understand why FERC appears to
13 believe consumers should not receive refunds unless
14 victimized twice.

15 Also, I believe the FERC should consider using
16 its Commission authority to impose stronger price caps
17 throughout the Western states. Several Commissioners have
18 expressed concern about the imposition of price caps,
19 arguing again the market alone should set prices. However,
20 I would argue the extensive evidence compiled by the
21 Commission itself proves beyond any doubt California's
22 wholesale market is so flawed and ripe for abuse that it
23 cannot produce the kind of price stabilization economists
24 would predict under normal circumstances. When the markets

1 cease to function in this manner, strong intervention may

1 be the only course of action capable of producing the
2 desired results.

3 Again, I wish to thank the Commission for its
4 time and consideration, and I hope the Commissioners will
5 carefully consider matters here today when finalizing the
6 draft order.

7 CHAIRMAN HOECKER: Thank you very much.

8 Mike Richmond, from the office of Senator Diane
9 Feinstein. Mr. Richmond.

10 MR. RICHMOND: Thank you, Mr. Chairman. It's a
11 pleasure to be here to represent the Senator. She, like
12 Senator Boxer, is required to be in Washington, D.C. She
13 asked me to deliver this statement. She has followed your
14 proceedings closely and appreciates the opportunity to
15 enter this statement.

16 I would like to submit these written remarks to
17 the Federal Energy Regulatory Commission about the
18 California Energy Crisis in lieu of personal testimony
19 because Congress is back in session in Washington. I
20 appreciate the opportunity to provide remarks and I
21 appreciate the Commission's consideration of my remarks.

22 In previous letters to Chairman Hoecker, I had
23 requested a full investigation of the California energy
24 situation, immediate hearings in Southern California, and a

1 wholesale cap on energy sold into the California Power

1 Exchange. I want to thank FERC for its attentiveness to my
2 requests. I am pleased that FERC has issued a report
3 (dated November 1, 2000) addressing this energy crisis and
4 I believe that FERC has properly concluded that the rates
5 in California are "unjust and unreasonable," and has
6 pinpointed many of the underlying causes of the crisis.

7 I am concerned that your investigation did not go
8 far enough and I urge the Commission to take stronger
9 action. FERC's proposed cap of \$150 on energy sold into
10 the California Power Exchange may control energy prices
11 during peak times in the summer months, but is an
12 inadequate response to the present situation. (I am also
13 concerned that the nature of this "soft" cap will provide
14 loopholes that allow energy generators to effectively
15 ignore the cap.)

16 The cap is a good first step but will not address
17 the problem at other times of the year and during times of
18 the day where demand is traditionally lower. Most of the
19 time, energy bids to sell onto the Power Exchange do not
20 approach \$150 per megawatt-hour. Energy prices during
21 those times must also be addressed.

22 Empirical evidence from the summer shows energy
23 prices during the middle of the night and early morning,
24 for instance, that were much higher than similar times in

1 past summers. Sempra Energy, for example, reports that the

1 price of spot power at midnight has been three times the
2 usual rate this past summer. Furthermore, even now in the
3 middle of November, at relatively light load conditions,
4 California is witnessing prices at or above the load cap.

5 This is disturbing evidence of a broken market
6 that has created enormous disparities between the winners
7 and losers in the California energy market. Unfortunately,
8 residents and businesses in San Diego County have become
9 the biggest losers here. This is unacceptable.

10 In the past, Governor Davis and I have asked for
11 a price cap on wholesale electricity rates in the region. A
12 price cap that is modulated to reflect different market
13 conditions at different times of the day and year would
14 effectively address the supply and demand imbalances.

15 If that is not possible, I urge the Commission to
16 consider imposing cost-based rates for energy generators in
17 lieu of the market rates that now exist. This would
18 eliminate the need for a wholesale price cap, while
19 ensuring more reasonable energy prices and also a
20 reasonable rate of return for companies selling energy into
21 the California Power Exchange.

22 I also believe the FERC must do more to encourage
23 bilateral contracts between Investor Owned Utilities (IOUs)
24 and energy generators. I understand that many generators

1 are offering reasonable rates (around 5 cents a

1 kilowatt-hour), but for long-term contracts (5 to 7 years).
2 IOUs are understandably reluctant to negotiate long-term
3 contracts under the present market conditions and I think
4 they have a good point. Although I appreciate the
5 willingness of generators to offer contracts, it is FERC's
6 duty to make sure that generators understand the potential
7 consequences of rejecting these rates for short-term
8 contracts.

9 I would suggest that FERC set up criteria to
10 ensure that energy generators offer reasonable rates
11 directly to energy distributors and/or to the Power
12 Exchange. If these criteria are not met, then the result
13 would be a strict region-wide wholesale price cap. A
14 second consequence could be a customer rebate for energy
15 delivered before, as well as after, October 2, 2000.

16 I understand that the Commission believes that it
17 lacks the statutory authority to issue consumer rebates for
18 market abuses before October 2, 2000. If Congressional
19 authorization is needed, I will work with my colleagues in
20 Congress to see that FERC receives this authority. I will
21 also work with Governor Davis to see that the California
22 Public Utility Commission is taking every possible action
23 on the state level to address the problem.

24 I believe a five-year moratorium on energy

1 deregulation may be needed in the state. A deregulated

1 market cannot function without adequate power sources.
2 There is no evidence that adequate energy sources can be
3 brought on-line in one or two years. It is essential that
4 FERC and the PUC work in lockstep to see that the
5 California market is fixed.

6 Thank you very much.

7 CHAIRMAN HOECKER: Thank you for those comments.

8 Now the office of Congressman Hunter. I hope I
9 don't do violence to this, Cato Cedioo; is that right?

10 MR. CEDIOO: Cedioo.

11 Thank you, Mr. Chairman. On behalf of
12 Congressman Hunter, Mr. Chairman and members of the Federal
13 Energy Regulatory Commission, FERC, I appreciate the
14 opportunity to be here today to present this testimony on
15 the ongoing electricity prices presently burdening
16 San Diego citizens.

17 As you all are more than aware, electricity rates
18 have resulted in San Diego's economy being drained of 75-
19 to \$100 million each month. Additionally, as a result of
20 this crisis, consumers here are expected to be over \$500
21 million poorer by the end of this month than they would
22 have been without electricity deregulation.

23 When you factor in the matter of electricity
24 prices increasing by 9000 percent in a matter of hours

1 during weak usage periods this summer, it is impossible for

1 anyone here to argue that electricity rates in San Diego
2 have been anything but unjust and unreasonable.

3 Clearly, Mr. Chairman, the situation is
4 unacceptable. Our citizens in San Diego cannot afford to
5 continue paying these outrageous prices for electricity.
6 Our citizens were forced this summer to use their money to
7 pay bills instead of vacations which they worked so hard to
8 acquire. And this all happened under the watchful eye of
9 your Commission.

10 In the Commission's recently completed report, it
11 was acknowledged and determined by FERC that the rates
12 experienced by San Diego citizens were, in fact, unjust and
13 unreasonable. According to FERC, statutory reform is an
14 obligation under the federal law. When electricity rates
15 are determined to be unjust and unreasonable, they are
16 deemed to be unlawful. It is at this point that FERC's
17 role in this matter troubles me.

18 As you all are aware, FERC has suggested on
19 numerous occasions that although rates in San Diego are
20 unjust and unreasonable, retroactive refunds to consumers
21 cannot be ordered by the Commission. I cannot fathom how,
22 as public servants, we can allow electricity profits deemed
23 to be unlawful, that is to say illegal, to remain in the
24 hands of those who ultimately acquire them.

1

Mr. Chairman, despite the fact that your

1 Commission sanctions fair rates, it has expressed
2 [inaudible] I believe to be profit unlawfully earned by the
3 energy producers selling power into the California market.

4 As you hear the numerous opinions presented by my
5 fellow witnesses this morning, I implore this panel to
6 actively pursue and exhaust every effort to order a refund
7 and return to San Diego's consumers the unlawful
8 electricity profits acquired over the last several months.

9 Mr. Chairman, I would like to thank you and the
10 Commission for the opportunity to be here today to present
11 this statement on behalf of Congressman Hunter. It is
12 possible he will be providing the Commission a revised
13 edited statement for the official record.

14 Mr. Chairman, I have worked for Congressman
15 Hunter for 19-1/2 years. At various times I have had the
16 opportunity to come into contact with a lot of businesses,
17 as well as seniors, as well as minorities being a minority
18 myself. I think, at this point in time, this is the
19 biggest crisis that these folks have faced. The fact is a
20 lot of the small businesses are having a tremendous
21 hardship time because of the markets, because of what they
22 have -- the greatest producers of our most work are
23 suffering tremendously.

24 On the other hand, the senior citizens in this

1 County of San Diego, they are living on a fixed income and

1 don't look for any increases from our federal government or
2 anywhere else, they are really suffering. I think that it
3 would be a very, very drastic thing to do if we do not come
4 back or the Commission does not take quick action in trying
5 to resolve some portion of this problem, at least to
6 relieve that pressure and the problems the people are
7 facing.

8 Thank you for the time, sir.

9 CHAIRMAN HOECKER: Mr. Cedioo, thank you very
10 much for those comments.

11 Now, California Senator Steve Peace.

12 SENATOR PEACE: Thank you, Mr. Chairman. First,
13 let me express my appreciation for the Commission coming
14 here to San Diego, as well as for the opportunity to beg
15 your indulgence a second time in less than two weeks.

16 I had not planned on attending, in fact I was
17 planning on being up in Northern California working with
18 some of Mr. Filner's criminals in an effort to try and
19 convince them to see the world differently.

20 Quickly, there was a comment made by Commissioner
21 Breathitt -- it was one thing that was very clear to me in
22 the hearing -- was the trouble, the difficulty, the angst
23 that you all are facing in terms of what I sense to be a
24 sincere desire on your part, each of you, to address this

1 and try to grapple with it. We all recognize, all of us

1 who have been dealing in this area for some time, how
2 complex it is.

3 Commissioner Breathitt made reference, I don't
4 have her exact words, to a concern that, if you acted in
5 the context of retroactivity or reimposition of cost-based
6 rates, that this would somehow represent failure. I think
7 this is the central message. You, Mr. Chairman, in your
8 opening comments yesterday and today reiterated the
9 Commission's view that you want to move forward with
10 deregulation.

11 Let me suggest to you that if you want to move
12 forward with deregulation, the step forward is to move
13 immediately to cost-based rates in the Western United
14 States. You have a submission you will no doubt hear later
15 from managing retailers and whatnot, and they will try to
16 convince you that well, we just need more retail
17 opportunities.

18 It doesn't matter how many retail opportunities
19 we have if you don't have a stable wholesale market.
20 Everybody buys out of the same wholesale market. Nor would
21 any state in this union move forward except under a gun to
22 their head if they didn't have confidence that this
23 commission, when it became necessary, would act to
24 stabilize the wholesale market.

1

You have heard references to prices and impacts

1 on communities. I would like to read from your own
2 record. This is the Federal Register. It is from the
3 proceedings in which your Commission engaged in
4 establishing the legal basis upon which you made the
5 decision to move away from cost-based rates to presuming
6 that the market was producing competitive rates.

7 You said this: "The Commission estimates that
8 the potential quantitative benefits from the final rule
9 will be approximately \$3.8 billion to \$5.4 billion per year
10 in cost savings. In addition to the nonquantifiable
11 benefits that include better use of existing assets and
12 institutions, new market mechanisms, technical innovation
13 and less rate distortion, the continuing competitive
14 changes in the industry and prospects of these benefits to
15 customers make it imperative that this commission take the
16 necessary steps within its jurisdiction to ensure that all
17 wholesale buyers and sellers of electric energy can obtain
18 nondiscriminatory access, that the transition to
19 competition is orderly, fair, and that the integrity and
20 reliability of our electricity infrastructure is
21 maintained. The many changes discussed above have
22 converged to create a situation in which new generation
23 capacity can be built and operated at prices substantially
24 lower than many utilities' embedded costs of generation.

1

"As discussed above, new generation facilities

1 can produce power on the grid at a cost of less than 3
2 cents per kilowatt to 5 cents per kilowatt, yet the costs
3 of large plants constructed over the last decade were
4 typically 4 to 7 cents for coal plants and 9 to 15 cents
5 for nuclear plants. The Commission's goal is to ensure
6 customers have the benefits of competitively priced
7 energy."

8 Now, this is the record on which you moved the
9 wholesale market to competition. The price today, as we
10 sit, today's price, not this summer's price, is 18 cents.
11 That is what right now, today, was on yesterday's
12 day-forward market, 18 cents.

13 You have done the right thing by declaring these
14 prices unjust and unreasonable. We should rid ourselves,
15 though, of the illusion that this is merely a function of a
16 shortage of supplies.

17 As I have indicated in prior correspondence,
18 while it is important for you to identify and use your
19 powers of subpoena for illegal behavior, it's not necessary
20 for you to do that to make the finding that rates are
21 unjust and order rebates.

22 I would like to finally ask the question: We
23 repeatedly hear that you do not believe that you have the
24 authority to order rebates, yet your staff in its

1 presentation admits in appendix 5 that it has no legal

1 precedent upon which to draw this conclusion. Your history
2 as a Commission has been one of very aggressive behavior.
3 You opened these markets without Congressional statutory
4 authority. Indeed, President Bush, the real President
5 Bush, in signing legislation the day before the election,
6 entering the second term, criticized the Congressional work
7 product for failing to give you the authority to open the
8 markets. You chose to open the markets.

9 I am not criticizing that decision. Indeed, if
10 you act today or act now to show not just Californians but
11 the country that you are going to take the actions and use
12 your power to ensure there is a disciplined wholesale
13 market, I think you can reach your goal of continuing to
14 move forward.

15 So I would ask you to do as you have done in the
16 past: Interpret your power broadly. Allow others to
17 challenge that power if they will. Don't force the
18 consumers of California and the state of California to go
19 to court in order to have the federal courts order you to
20 order rebates.

21 Second, I would suggest that you accomplish the
22 quantification of that rebate procedure by ordering the
23 parties into a settlement conference immediately. Give
24 them 90 days to come back to you with a proposal for

1 settlement numbers. If they fail to act, you can, in the

1 meantime, have your staff working on a substitute proposal,
2 and it would be healthy for those parties not to know what
3 that proposal may be that would come from you all.

4 Second, I would suggest that you abandon the
5 effort to come up with still another experiment in complex
6 tariffs. None of these tariffs will work in an environment
7 so tight with respect to supply. You heard the testimony
8 last week from Representative Diney, and I don't think you
9 will find any credible testimony contradicting his
10 testimony. He said to you things are not going to be any
11 better next summer with respect to supply than they were
12 this summer.

13 You now know going forward that there will not be
14 a working competitive market in the Western United States
15 because it's impractical to believe an adequate level of
16 additional supply can be brought forward. Those who argue
17 you can solve the problem by having more forward
18 contracting are simply trying to have you give the legal
19 imprimatur of embedding these high costs.

20 We had an ad taken out in the San Diego Union
21 yesterday bragging about offering 8-1/2 cent power. You in
22 your proceedings predicted 3 to 5 cent power. What their
23 fundamental goal is is to shift your sense of what is fair
24 and justified and shift our sense as consumers of what is

1 fair. When they get us into a position of having nowhere

1 else to go, we take it because there is no place else to
2 go.

3 You are the only body on this planet that can
4 bring stability to the wholesale market. If you bring
5 stability to the wholesale market, then those who have
6 responsibility for developing a retail market are given
7 adequate time to do that. There will be no retail market
8 developed in this market if you don't give us a stable
9 platform from which to work. That is moving forward. That
10 is not giving up.

11 I hope you will convey to Commissioner Breathitt,
12 at least my view, as feeling our failure -- I am going to
13 underline, our failure -- will be in failing to act now in
14 using the tools we left in place in the context of a
15 deregulated market. If we are not going to use those tools
16 we were promised to be there, if that stability is not
17 going to be guaranteed, then we should declare failure and
18 go back to either public power -- in this state I suspect
19 we will probably go not to regulation but public power,
20 because we have the capital to do that, and it may not be
21 an option other states have, but we clearly do. If the
22 market is going to tell us the prices are going to be like
23 this and we know we can build power and sell it to our
24 folks at less than half that price, obviously we are going

1 to build the power ourselves and operate a public power

1 system. That will be failure.

2 But for you to act today or in the next few weeks
3 to return to cost-based rates in the wholesale market
4 temporarily until the market can reasonably be judged to be
5 competitive is success. It's using your tools, it's moving
6 forward, and I would ask you to do that.

7 Thank you.

8 VOICE: Mr. Chairman, could you get that light
9 turned off. They turned it on us in all our eyes over
10 here.

11 CHAIRMAN HOECKER: Do you gentlemen leave the
12 flood lights on?

13 VOICE: We will try to adjust it.

14 CHAIRMAN HOECKER: Let's see if we can get
15 this --

16 VOICE: Thank you.

17 CHAIRMAN HOECKER: Is that better?

18 VOICE: No.

19 CHAIRMAN HOECKER: Why don't we shut them off for
20 a while.

21 Is that better?

22 VOICE: Thank you.

23 CHAIRMAN HOECKER: That is great.

24 Let's move now to Donna Smith, who represents

1 Assemblywoman and Congresswoman-elect Susan Davis.

1 MS. SMITH: Thank you. The Assemblywoman
2 regretted very much she cannot be here this morning, but is
3 required to be in her freshman orientation in D.C. It's
4 ironic that, while you be here, she be there. She asked me
5 to read her remarks. They are as follows:

6 "Chairman Hoecker, Members: I want to begin by
7 thanking you for responding to my request in a letter to
8 you dated October 21, 2000 that you hold a hearing in
9 San Diego on your proposed orders to correct California's
10 'seriously flawed' wholesale electricity market. As I
11 stated then, it is truly important to the ratepayers who
12 initially suffered the shock of high bills that they have a
13 real opportunity to testify.

14 Because many citizens want to address you, I
15 would like to highlight only three of the areas addressed
16 in your report.

17 First, while I appreciate that the staff
18 conducted and reported their study of the energy market by
19 the November 1, 2000 deadline, I am distressed that,
20 according to your report [page 1-1], a strategic decision
21 was taken NOT to make a formal investigation of the actual
22 behavior of the generating companies but only to look at
23 the market results. Therefore, you did not determine
24 whether or not these companies had intentionally withheld

1 supplies and in other ways tried to 'game' the market.

1 Indeed, your report acknowledges [pages 1-4, 5-2, 5-16f]
2 that some of the price spiking results could have been
3 cause by such manipulative action. Even though supply and
4 demand issues clearly underlay this summer's crisis, it is
5 important to know what role and proportion intentional
6 actions played in exaggerating the crisis.

7 To San Diegans, this issue is paramount. Many
8 believe that there was greedy and illegal action by the
9 generating companies and that a clear part of your task was
10 to investigate this matter and, if appropriate, to order
11 refunds of excessive profits.

12 I would challenge the assumption that you did not
13 have the legal authority to order refunds prior to October
14 1 and urge legal action if needed to clarify this matter.

15 When I am sworn in as a Congress member, I will make it my
16 first action to join with Congressman Bob Filner to pursue
17 legislation to assign that authority clearly.

18 Meanwhile, I strongly support your Proposed Order
19 [page 6-3, 6-17], that FERC order its staff to conduct a
20 formal investigation of the generating companies with
21 authority to depose participants, subpoena their records to
22 determine profit patterns, and otherwise proactively
23 investigate whether withholding and price manipulation
24 occurred. I urge you to order the report to be completed

1 within 90 days.

1 My legislation has rolled prices back to 6.5
2 cents per kilowatt-hour as of last June 1, and this rate
3 will be maintained for a minimum of 30 months. Consumers
4 are now receiving electric bills that contain credits for
5 the excessive summer payments. Therefore, you now have the
6 time to conduct this investigation and to act on the
7 results. While your proposed orders envision refunds of
8 excess profits in the future as well as possible penalties
9 for manipulation of prices, you must assure the public that
10 you are prepared to require a refund of these past
11 excessive profits to mitigate the utility companies' losses
12 during this uncontrolled period.

13 The second are of importance is restructuring. I
14 agree with your proposal to disband both the California
15 Independent System Operator [ISO] and Power Exchange [PX]
16 stakeholder governing boards as currently constituted.
17 Indeed, in early August, I called for this action, as it
18 was evident that having a plurality of membership by
19 self-interested representatives called in question the will
20 of these bodies to act on behalf of consumers.

21 You have also proposed a number of viable,
22 alternative options to address restructuring the wholesale
23 market so that prices during the next two years and beyond
24 are held to a justifiable range. A consensus should be

1 developed by the responsible state and federal bodies to

1 implement these changes.

2 Third, you have acknowledged your obligation to
3 ensure "just and reasonable wholesale rates." Yet, you did
4 not declare that the rates charged were unjust or
5 unreasonable despite evidence that in June consumers had
6 paid rates 65 percent higher than competitive rates that
7 would have been caused by disparities in supply and demand
8 alone. Your report failed to define clearly just how
9 "reasonable" rates should be measured. Indeed, you state
10 [page 5-17] that a generator's true marginal cost is the
11 generator's "opportunity" cost which then is the "true
12 value of its output." Essentially, this is the opportunity
13 to charge whatever the market will bear. The public simply
14 does not buy this definition of "reasonable and just."

15 Statements by the executives of utility
16 generating companies have come down on both sides of this
17 issue. Immediately after the rates spiked, one bragged
18 that companies were justified in charging as high a price
19 as they could get. However, other utility executives have
20 stated that with a \$150 per megawatt-hour cap companies
21 could provide electricity and still make a "fair" profit.
22 You have proposed such a soft cap in the future.

23 Which position do you take? FERC needs to give
24 clear guidelines so that both consumers and suppliers will

1 understand what is "just" and how "reasonable" rates are to

1 be set. Again, if FERC does not act, the Congress must.

2 Above all, I believe that as a regulatory
3 commission you need to make clear that the purpose of
4 deregulation is not to enrich the power generating industry
5 but is to provide this essential utility at the lowest
6 possible cost to consumers with a fair but not excessive
7 return to the generating companies. It is incumbent upon
8 you to be a vigilant watchdog and to meet your obligation
9 to assure that consumers do have just and reasonable rates.

10 Thank you very much.

11 CHAIRMAN HOECKER: Thank you very much. And now
12 we have Assemblywoman Denise Moreno Ducheny. Ms. Ducheny.

13 MS. DUCHENY: Thank you very much. I join my
14 colleagues. I hope you know this table is federal, state
15 and local officials and as bipartisan as it gets in
16 San Diego County. When the Congressmen and we are
17 together, we know we have got a deal.

18 I thank you for coming to San Diego to hear what
19 I think will be a very small cross-section of testimony
20 later today from the many thousands of constituents that we
21 have all heard from over the last several months. When
22 this crisis became apparent -- and I don't think it just
23 happened then but I think it became apparent to everybody
24 this summer -- it was particularly apparent here in

1 San Diego where it was being passed on to retail

1 customers. But we hope you recognize through all your
2 deliberations that this is just not -- San Diego is sort of
3 the front, if you will, the one that got out in front and
4 made it apparent to everybody. But the crisis is clearly
5 statewide and really regionwide in the Western states.

6 From the orders in your Federal Register that
7 Senator Peace quoted earlier, you were suggesting there
8 would be this potential savings in the neighborhood of 4-
9 to \$6 billion nationwide when your orders from 1996 went
10 into place. But in fact, this year, in California alone,
11 the losses due to this out-of-whack power market are over
12 \$6 billion, just in California alone. It's not just
13 San Diego, it's occurred also in Los Angeles, San Francisco
14 and throughout the state, and it's only not as apparent in
15 the public outcry sense because they were not in a position
16 to pass those rates on to retail customers yet over the
17 summer.

18 But it is a huge issue for California's economy.
19 We know that later this morning, you will hear from the
20 Governor and others of our state regulatory officials. But
21 you need to be conscious, I hope, although it's a small
22 cross-section you will hear from, that you understand how
23 dramatic those increases this summer were for all of us
24 here in San Diego, particularly, as Mr. Cedioo stated, for

1 our small business people and even our large customers.

1 In our districts it was hospitals, it's health
2 clinics, it's all of the necessary people that we rely on
3 for services throughout the state. I think Senator Peace
4 and Congressman Filner both said, I believe there is little
5 question we will move in this state toward public ownership
6 of power if there isn't some stability brought to this
7 market. I don't see any way around it for us. It is
8 something being started and talked about certainly in
9 San Diego. When you look throughout California, the places
10 where they aren't suffering the same kinds of problems are
11 in fact where we have publicly owned utilities. And that
12 is the direction I think people will start to look to
13 throughout California in the immediate future if this isn't
14 brought under control.

15 Now, we do believe, and I think all of us here
16 believe, that you have the authority right now to order
17 rebates, to order, in fact, now that you have found that in
18 fact what we suffered this summer were rates that were not
19 just and reasonable, in the face of that finding, we
20 believe strongly that you have the authority now to order
21 whatever kind of remedies are necessary to get those
22 rebates in place.

23 The legislation that Assemblywoman Davis and
24 Senator Alpert -- who, by the way, would have been here

1 also, except she is out of town -- you know, that we all

1 carry on a bipartisan basis in our House and in the Senate
2 to do the rebate that Ms. Smith referred to for our retail
3 customers, to put the caps back in place and order rebates
4 to our retail customers, included our understanding that
5 when you got to doing these investigations and were going
6 to find what we then believed and you have now found were
7 unjust and unreasonable rates that you would be able to
8 order that remedy and give us those rebates and not cause
9 the balancing account that others have feared and referred
10 to. That many of our people still have a debt, we think
11 that debt should be wiped out and believe that, by
12 appropriate action on your part, our ratepayers, consumers
13 and businesses and individual consumers alike should not
14 have to fear this unreliability, this fear of the spiked
15 market again next summer, the summer after. We shouldn't
16 be in that position. We believe you have the authority to
17 do that.

18 We all support Congressman Filner's legislation
19 but would point out to you, even if that legislation -- it
20 says we don't really think FERC needs this authority, but
21 if you insist you need it, we will give it to you. I think
22 that is embedded in the language. On a bipartisan basis, I
23 think all the California delegation certainly, and I hope
24 they would be able to convince our colleagues in other

1 states they don't want to experience what California is

1 going through at the moment and would support that
2 legislation, but we hesitate to suggest that you ought to
3 wait for it. We think you have the authority now.

4 I think it was Senator Peace who earlier said, I
5 think you take the authority, do it and see if somebody is
6 there to challenge your authority to do that. If it's
7 otherwise unclear, certainly legislation can be clarifying,
8 but I think the language of the legislation says it is
9 clarifying in nature, it's not meant to change something
10 that both Congress and certainly ourselves here in
11 California all believe, that you already have that
12 authority. We ask you to exercise it as soon as possible
13 to allow us to bring this situation back into a stable --
14 to allow our ratepayers to know what they can rely on, what
15 the appropriate power rates are.

16 I think somebody else referred earlier, and I
17 would certainly endorse the concept of cost-based rate
18 setting. This is clearly a common difficulty. It's become
19 an essential of life. A hundred years ago people probably
20 didn't feel they need electricity as much. But today it's
21 mandatory for the kind of economy we are running, certainly
22 in California. It demands electricity as a necessity and
23 we need it to be based on its cost level.

24 If it's going to continue to include private

1 ownership and generation, then you can set reasonable

1 returns for them. But only reasonable as above what it
2 costs to generate and not whatever they can manipulate in a
3 market in a touchy supply situation. In California,
4 attempting to address the supply situation, the energy
5 commission was here yesterday holding a hearing
6 specifically on one of the power plants being sited in
7 San Diego County, and certainly throughout the West there
8 are efforts to increase the supply.

9 But the bottom line is we still need to have
10 whatever supply is there delivered to consumers and
11 ratepayers at reasonable and just prices.

12 Thank you.

13 CHAIRMAN HOECKER: Thank you, Assemblywoman.

14 Now I would like to turn to Chairwoman Dianne
15 Jacob, San Diego County Board of Supervisors. Nice to see
16 you.

17 MS. JACOB: Thank you, Mr. Chairman, for being
18 here again and also allowing me, for the second time in
19 less than a week, to address you, once in Washington, D.C.
20 last Thursday, and then again today.

21 I represent, as I mentioned to you in Washington,
22 I represent a board of supervisors that has been a very
23 strong proponent of privatization of public services. But
24 because of the failure of the regulators, at least so far,

1 we are seriously considering the establishment of a

1 municipal utility district to protect consumers. So far
2 the regulators -- and I am sorry to say, including
3 yourselves -- have failed to protect consumers. We are
4 hoping that you will do that as you issue your final order,
5 and take further actions.

6 I won't repeat the testimony that I provided to
7 you in Washington, D.C. but rather would like to expand on
8 it. I know that your Commission recognizes that our rates
9 in San Diego are unjust and unreasonable and that the
10 market is dysfunctional. But now it's time to take the
11 next step.

12 Once again, I urge you not only to continue your
13 investigation of market abuses but to order the refunds we
14 so much deserve retroactively to May 1st of this year. I
15 believe you have the power to do so, and we will be
16 providing additional written comments in order to do what
17 we can to convince you that you have that power.

18 San Diego consumers are the innocent victims of a
19 dysfunctional market and rightly deserve to be paid back
20 for the electricity overcharges that we have suffered. The
21 current dysfunctional market has resulted in excessive
22 profits for generators at the expense of the people and
23 businesses in San Diego, and that is wrong. I am going to
24 demonstrate that to you this morning.

1 Major unregulated corporations that are

1 generators or marketers of electricity in California have
2 recently announced their third quarter earnings reports.

3 It should not come as a surprise that many of these
4 companies are reporting record third quarter earnings.

5 Results of our preliminary review, Exhibit A -- I have
6 handouts for you, but we also have charts. It's a little
7 hard to see back here. We can move it closer to you but I
8 believe we have a handout -- shows the profits for
9 approximately a dozen of these firms.

10 (The document follows:)

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1 MS. JACOB: As you can see, the profits of these
2 companies are up to the tune of over \$2 billion and are
3 well above historical returns. A handful of these firms
4 are producing profits that are multiple times what their
5 profits have historically been.

6 Companies such as Dynegy and Enron have produced
7 record profits. Industry analyst Carol Coale of Prudential
8 Securities recently stated, "California clearly drove the
9 positive momentum at both of these companies. And you
10 probably just saw the beginning of a string of strong
11 reports." Dynegy has already fully recovered the cost of
12 the plants that it acquired in Long Beach and El Segundo.
13 It is well on its way to covering the cost of the Encina
14 and Carlsbad plants. As you are all well aware, it has
15 historically taken upwards of 20 years to pay off the
16 capital investment in these resources. Profiteering this
17 summer has enabled these generators to pay down their debt
18 much quicker than anyone expected.

19 What will their profit levels look like next
20 summer when their debt is paid down and all of their
21 one-time write-offs have been recorded?

22 Other firms with substantial investment in
23 California such as NRG and Calpine also had record
24 quarters. Let's look at this situation objectively.

1 Dynegy, up 124 percent; NRG, up 342 percent; Enron, up 76

1 percent; Calpine, up 123 percent; and San Diego ratepayer
2 bills up 733 percent, and you can see that on Exhibit B.
3 That is 3 cents back in 1999, June, to a high of 22 cents,
4 as the Senator indicated, 18 cents per day, but November
5 averages around 14, far higher than what we should be
6 paying.

7 Still, I have two more exhibits that are going to
8 show, Exhibits C and D, which will show the direct
9 correlation between the excessive profits of California
10 generators and electricity costs in San Diego.

11 To the left, chart C shows the electricity
12 generator profits. The big black bar at the left is for
13 1999. You can see the increase up to 5. -- what is it --
14 \$5.3 billion; in other words, a 78 percent increase.

15 Look to the right, which shows San Diego's
16 electricity costs and you see 1999, about 3.2 cents and
17 then you see most recently, representing also second and
18 third quarters, the same as the profits for the generators,
19 an enormous increase in the prices. These are averages.
20 Up over 400 percent on average.

21 I submit to you there is a direct correlation
22 between the prices of electricity in San Diego and
23 California and the excessive profits that the generators in
24 California have been receiving.

1

Is there any question that San Diegans are paying

1 for these excessive profits caused by a dysfunctional
2 market that we did not create? Is there any question?

3 Here is the evidence. It's right before you.

4 Investment does not require the expectation of excessive
5 profits, only reasonable profits, and generators never had
6 a legitimate expectation of earning or keeping excessive
7 profits . Finally, I have an updated list of the hardships
8 suffered by individuals, businesses, non-profits, school,
9 hospitals and others in San Diego as a result of the
10 outrageous electricity overcharges. Just to point out a
11 couple for you, take the Ramona Annie Oakley's Restaurant.
12 Small business. Their bill, \$1400, up to \$6500. World
13 Famous Buck Knives in El Cajon. Their bill increased from
14 50- to \$70,000. They are afraid of closing their doors and
15 laying off some 300 workers because of these prices.
16 Devaney's Bakery actually went out of business on October
17 14th.

18 There are many more on the list. Just a couple
19 more. The Palway Road Mini Storage, another small
20 business. Their bill increased from \$879 to \$2392 in just
21 one month. World Famous Taylor Guitars, also in El Cajon.
22 Their bill increased from 20,000 to \$50,000 in one month.

23 Salvation Army. Everyone knows of nonprofit
24 organizations being hard hit. Salvation Army, their bill

1 doubled up to \$9000. Senior Citizens Center increased from

1 \$1500 to \$4000. The disabled American senior citizen
2 living in a mobile home park, June of this year, \$190; in
3 one month, his bill went up to \$362. Many others on fixed
4 incomes, you will hear from others today who will come to
5 testify before you.

6 San Diego ranks as the 37th largest economy in
7 the nation. We are generating almost \$100 million in goods
8 and services annually. Our people are in trouble. Our
9 businesses are in trouble. Our economy is in trouble. We
10 need your help. You know what to do.

11 I have never seen such a united group of elected
12 officials at all levels of government representing
13 San Diego County and California come together on this
14 issue. It's because this issue is affecting every man,
15 woman and child in this region, and soon to affect all
16 Californians and others in the nation. Please fix the
17 problem here so that it does not affect 32 million
18 Californians or others in this nation.

19 I thank you again for allowing me to speak to
20 you.

21 CHAIRMAN HOECKER: Thank you, Chairman Jacob.

22 Now Councilman George Stevens from the City of
23 San Diego.

24 MR. STEVENS: Thank you very much, Mr. Chairman

1 and members of this Federal Energy Regulatory Commission of

1 the United States of America. Thank you for your
2 sensitivity in having hearings here in San Diego, instead
3 of Washington, D.C., where the problem exists, here is an
4 energy crisis.

5 The energy problem itself has been pointed out
6 clearly by the speakers who spoke previously this morning.
7 Certainly, I am not going to be redundant, because, as they
8 have well documented and pointed out, as appointees of this
9 most powerful Commission, you have the opportunity to right
10 a wrong that has been imposed on the energy consumers of
11 San Diego County. The impact of the energy costs on
12 Mrs. Jones, Mrs. Sanchez, Mrs. Culpepper, Mrs. Hum and the
13 small businesses here in the city of San Diego has caused
14 health failure and economic disaster.

15 Commissioners, you have the authority to change
16 this, to right this wrong. My real question to you is, do
17 you have the courage to do it? It takes courage to lead.
18 You have been placed in a leadership position. We need you
19 to prove your leadership against the powerful people who
20 oppose any change, who want the profits that Commissioner
21 Jacob has pointed out this morning. They devastate people,
22 they override people, they overrule people because they are
23 appointed by powerful people, not by the weak, not by the
24 poor. This is not, as I pointed out, about color, it is

1 not about [inaudible]. The power companies are an equal

1 opportunity destroyer. They are destroying everyone in
2 this process. You can change that. You have the
3 authority, as I said.

4 Now, would you take the leadership and do that?

5 Don't just come here and hear what we are saying.

6 Understand the problem and make a decision about correcting
7 the problem. Don't be like the Public Utility Commission.

8 Don't be like the Republicans in the state Senate, and yes,
9 it should not have been partisan but the bill that was

10 passed that placed caps, only a handful of Republicans

11 supported it. I don't know why and how this became a

12 partisan issue, because everybody is devastated by the same

13 companies. We are not only consumers but they are

14 consuming us all. You can stop it. You can change it.

15 Please do so.

16 Thank you.

17 CHAIRMAN HOECKER: Thank you. And now the mayor
18 of Escondido, the Honorable Lori Holt Pfeiler.

19 MS. PFEILER: Thank you very much. We really
20 appreciate your coming back to San Diego to listen to our
21 concerns.

22 I am deeply disappointed to learn that while you
23 determined the rates in San Diego were unfair and unjust,
24 that the FERC would not order a rebate or roll-back. You,

1 as the strong advocate for deregulation of the energy

1 industry in this country, bear extraordinary responsibility
2 for the hardship that has been placed on our citizens. You
3 said that there is a fundamental change. I am concerned
4 about the trust individuals have for market-based business
5 practices. We believe many markets are manipulated to our
6 detriment. Look at our situation in San Diego. One day we
7 wake up and electric rates have skyrocketed. We weren't
8 warned, we couldn't plan for it, and this wasn't a real
9 emergency.

10 What we find as time passes is that FERC does
11 believe the rates were unjust and unreasonable. They find
12 supply wasn't really short. Somebody tells us the state
13 rules are not clear. The whole situation is absurd from
14 our point of view, the consumers' point of view. It's just
15 reinforced that, once again, the working individual is
16 working every day, trying to provide for a family, save for
17 retirement, take a vacation once in a while, and we don't
18 really have any control over our fundamental needs or the
19 costs of those fundamental needs.

20 What we see from the actions this past summer is
21 that no one cares about the individual. I challenge you to
22 do the right thing in that this market is unacceptable.
23 You have the authority to fix it. You're the experts. You
24 are responsible for fixing this market. That what is we

1 expect in San Diego.

1 Thank you.

2 CHAIRMAN HOECKER: Thank you very much.

3 Commissioner?

4 COMMISSIONER MASSEY: No, thank you.

5 CHAIRMAN HOECKER: I want to thank the panel for

6 doing its homework. You were all elegant and effective

7 advocates for your constituents and your comments, the

8 statistics you have given us will be given the most serious

9 consideration by this commission.

10 First of all, I want to make a couple of

11 clarifying points. It came out in a couple of comments

12 that some of you think that the soft cap proposal that is

13 in the Commission's proposed order -- I repeat, proposed

14 order -- is what our determination is of what a just and

15 reasonable rate is. That is not accurate. It's really a

16 threshold having to do with how the price action works in

17 the marketplace. It perhaps will not be, in the

18 Commission's view, the strongest price constraint.

19 We have determined at least a large part of the

20 escalation in wholesale prices was due to the overreliance

21 on the spot market. To the extent participants in the

22 market can engage in forward contracting and participate in

23 forward markets, we think that will have an enormous

24 dampening effect on price. So we would like to have your

1 views on that.

1 SENATOR PEACE: Why?

2 CHAIRMAN HOECKER: It's fully explained in the
3 order, Senator.

4 SENATOR PEACE: I read the order, Mr. Chairman.
5 With all due respect, the only thing I see is the embedding
6 of high prices. One could not, if one stood back in a room
7 like the Wizard of Oz, one could not have orchestrated the
8 circumstances better to the betterment of the marketers.

9 CHAIRMAN HOECKER: And I think an overreliance on
10 spot markets plays into that. I don't disagree with you at
11 all in terms of exercised market power. I do think when
12 people have the chance to plan, when consumers have the
13 chance to protect themselves, when people have a chance to
14 contract over the long term, the volatility -- a
15 substantial amount of volatility is taken out of the
16 market.

17 SENATOR PEACE: If you take --

18 CHAIRMAN HOECKER: Let me finish my point.

19 I also wanted to clarify, I believe Ms. Smith
20 made the point that we have decided not to investigate
21 seller behavior in the market. That is not the case. I
22 think we made that clear in Washington, it was clear on the
23 day we issued our order. I would just like to mention
24 that. There is an ongoing responsibility of this

1 commission in any market to uncover and correct abuses of

1 market power, gaming of the market as many people here
2 called it this morning.

3 And that investigation is ongoing at the
4 Commission. The staff's investigative report clearly does
5 not address much in that area. I think it was a function
6 primarily of the time in which they had to put their report
7 together. But that does not conclude that issue or in any
8 way wash the Commission's hands of it.

9 I would like to ask, since the focus of this is
10 making the whole market work properly, I am sure we will
11 hear more from the governor and president of the CPUC this
12 morning, but what do you all think is the role and
13 responsibility of the state of California and Public
14 Utility Commission to address this issue? What should be
15 done in Sacramento as well as Washington to help correct
16 the problem we have been discussing? Do any of you have
17 views on that?

18 SENATOR PEACE: Mr. Chairman, we can deal with
19 symptoms but for us to tell our people we can, on a state
20 level, fix a wholesale market out of control would be to
21 misrepresent the truth. We have no jurisdiction in the
22 wholesale market.

23 You have heard me criticize our Public Utilities
24 Commission for ordering sale of those power lines, for

1 example. But even had the wholesale market been subject to

1 appropriate policing, it should not have caused the
2 circumstances in which the price of electricity is 18 cents
3 in November.

4 CHAIRMAN HOECKER: I agree. You made that point.

5 SENATOR PEACE: To answer your question very
6 simply, absent this commission acting retroactively and
7 returning to cost-based rates temporarily, or something
8 along those lines that won't simply allow marketers to find
9 the next way to manipulate, the only choice you will give
10 us on a state level is to take over first the transmission
11 grid through a publicly owned RTF, then condemn the output
12 of those power plants which the PUC orders sold so we can
13 return them to cost-based regulation, and then to use
14 public capital for the construction of additional supply.

15 Your concern as a Commission -- and I appreciate
16 why you are concerned -- you are afraid if you act in a way
17 that keeps prices down in California, that those low price
18 signals will crowd private capital out. I respectfully
19 submit that your statutory authority is to assure that
20 there are just and reasonable rates in the wholesale
21 market.

22 If you encounter a circumstance in which there is
23 not a workably competitive market -- your words, not
24 mine -- because a state has not, for example, allowed

1 adequate power generation, you do not become the Federal

1 Land Use Commission and order some change in the rules that
2 you think will create an environment to induce more power
3 to be put into the state. That might be the smart thing to
4 do and might be, given you have that power and authority,
5 you ought to do. But you don't have that. You only have
6 the charge to be responsible for the wholesale market.

7 If in fact the state of California or any other
8 state or any other region fails to allow, perhaps the
9 people of that state might very well as a matter of policy
10 say you know, we have decided we don't want all those power
11 plants built. We are willing to go to distributor
12 generation, to go to fuel cells, we are willing to do these
13 other things, whatever it may be; we don't want to build
14 transmission lines. That, in your view and my view, might
15 not be a smart decision. But the people have that right.
16 They are not obligated to embrace an environmental policy,
17 a land use policy and an entire state public policy based
18 upon what your or your and my view might be about what
19 ought to happen in wholesale electric markets.

20 When you ask that question, Mr. Chairman, with
21 the sense of the hair standing up on the back of the neck a
22 little bit, I think you will sense it a great deal more
23 when you hear from the governor later today, that we
24 believe the Commission, as a consequence of 10 years of

1 constant testimony from energy companies, has been lulled

1 into a false view of the world. That false view of the
2 world is that the most important thing in our lives is to
3 make sure that energy competition happens. More important
4 than the health of our children, more important than all
5 the other commerce that occurs in our communities, more
6 important than our environmental laws, more important than
7 anything, we must have energy competition.

8 Well, I don't think there is a person walking on
9 that street in California, in San Diego, in Nebraska -- God
10 forbid I mention Florida -- that believes that.

11 We ask you, we beg of you to get out of the box.

12 CHAIRMAN HOECKER: I think there isn't a person
13 on the Commission who believes that either, and I would
14 thank you not to characterize --

15 SENATOR PEACE: Mr. Chairman, I know that. As I
16 said, I sense the sincerity of your purpose, but I also
17 heard your remarks yesterday. You have said yesterday, we
18 are going to move forward and we have invested a lot in
19 this and need to move forward, and a deregulated market
20 will provide benefits to the public in the long run.

21 If you and I believe and we are together on that,
22 and if we believe that the best way to get there is to
23 create these market signals that will bring private capital
24 in, we can't impose our beliefs on the people of this

1 state. They are going to make their own land use

1 decisions, and you are trying, through a FERC order, to
2 make land use decisions and environmental decisions, and it
3 won't work.

4 CHAIRMAN HOECKER: That is your view. I
5 appreciate it.

6 Does anyone have other views about what the state
7 of California might do?

8 MS. JACOB: Mr. Chairman, I am certainly not an
9 expert on who is supposed to do what. Based on my
10 observations, I see the ball being tossed back and forth.
11 And my interest is on behalf of consumers that are hurting
12 badly. My hope would be that each agency, the California
13 Public Utilities Commission, the state legislature,
14 Congress and your Commission do what is within your power
15 to do on behalf of the consumers.

16 And I do believe that your Commission has the
17 responsibility, the legal responsibility, to adjust
18 wholesale rates if they are unjust and unreasonable as you
19 have determined. That is all we are asking you to do, to
20 step out and protect the consumers with some temporary
21 price controls. For the long term, in order for the market
22 to correct itself, to have competition in the market where
23 we could have a truly deregulated environment, there are
24 some fixes that need to occur. And I would submit that

1 it's not just your Commission but it's the California

1 Public Utilities Commission, the state legislature may have
2 a role here, too, and Congress may have a role.

3 I would hope that all could work together and
4 step up to the plate, do what you have the responsibility
5 to do and put consumers number one.

6 CHAIRMAN HOECKER: I appreciate that and I do
7 think that tossing the ball back and forth is very
8 counterproductive. We will work with the state of
9 California, I assure you of that.

10 When it comes to markets, it's very difficult to
11 segregate wholesale from retail. Clearly the state has
12 some powerful influence on the participation of electric
13 utilities, on the market participants in this market, in
14 terms of their ability to participate in forward markets,
15 participate in bilateral transactions, siting of generation
16 or transition, or the creation of programs to manage
17 demand, and ensure that when rates are low, we don't make
18 the mistake of unreasonably increasing our uses of energy
19 to our long-term detriment, which I think is both a state
20 and federal function.

21 But are there other comments anyone wishes to
22 make before I move on to the next panel?

23 I very much appreciate your participation today.
24 Thank you so much for coming. We will move on to our next

1 group of presenters, who I believe will come up as a

1 panel.

2 Our first presenter is Carolyn Kehrein from the
3 Energy Users Forum. Please come forward, folks. We have
4 got a panel of about eight or 10 people. You are more than
5 welcome to speak from the table, or if you prefer to get a
6 better shot on television, you can step to the podium and
7 strike a pose. You can do it any way you want.

8 MR. BOERGERS: If I could remind the speakers, in
9 order to accommodate everyone, we will ask you keep your
10 remarks to about three minutes. I will break in about that
11 time to ask you.

12 CHAIRMAN HOECKER: Ms. Kehrein, did I say that
13 right?

14 MS. KEHREIN: It's Kehrein, but you are close.

15 CHAIRMAN HOECKER: I have been a "Ho-ecker" most
16 of my life.

17 MS. KEHREIN: Thank you for this opportunity to
18 address you. I think you will find it fortunate I am not
19 here to ask you for a recount. Instead I would like to
20 address your proposals for market change.

21 My name is Carol Kehrein. I am here on behalf of
22 Energy Users Forum. Energy Users Forum represents
23 commercial, industrial customers, retailers, [inaudible]
24 and manufacturers. The facilities range in all sizes and

1 are all over the state.

1 The Commission has come up with a number of good
2 proposals and a few others that might need tweaking a
3 little. In a short period of time, I will just hit the
4 highlights. I hope before my time is up to give you some
5 of the impact on retail markets. I realize you don't
6 regulate the retail markets but the rules and decisions you
7 make have a significant impact on those markets.

8 For instance, some of the things we agree with:
9 We agree there are tremendous infrastructure shortages,
10 including transition generation, and gas infrastructure.
11 California does operate as part of a larger region. We
12 hope we get to what I call a wide area RTO, so we hope that
13 happens, and we understand the need for it to be wide area,
14 not just California, the bigger the better. We need stable
15 rules and certainly to attract infrastructure investment.

16 I also agree with most of the proposal related to
17 the ISO and note their implementation is already underway.
18 They include incentives or penalties to encourage market
19 participants to schedule accurately, establishment of --
20 procedures, congestion management, new approaches for
21 replacement reserves and effective demand response
22 programs.

23 As a side note on demand responsiveness, it takes
24 a lot of time to develop a demand responsive program. You

1 have to -- one of the great ways is building standards,

1 which takes time, you have to put in plans and build. So
2 it will take a long time before we end up with price- and
3 cost-effective demand responsiveness, which means now we
4 have high incentives. At 750, we have a hard time getting
5 people involved.

6 I also agree competition should ultimately
7 benefit the customers. Your order specifically states it
8 should lead to just, reliable supply and lowest reasonable
9 prices. In the past, I think you, Chairman Hoecker, have
10 brought this up, it also leads to construction innovation.
11 So that was missing from your order and is normally part of
12 your mantra, so I thought you would like to get that back
13 in.

14 I would note I am a market person, which leads
15 people to question my recommendations. It's because, to
16 rely on markets, you have to have markets. Because of the
17 infrastructure shortfall in California, most -- we do not
18 have markets in California. We need rules to protect
19 consumers -- don't incent unintended behavior, which is a
20 significant problem in California.

21 I would like to address a few ideas that need
22 tweaking. First, the order states utilities could have
23 hedged. Actually, they could; if they asked for more, they
24 could have gotten more, they didn't use what they had. As

1 for need, we also are halfway hedged by the stuff the --

1 the assets they had that were part of -- so they really
2 only needed to hedge half and didn't quite get that much,
3 but they also didn't ask for that much.

4 My concern is that your statement in the order
5 could be used by utilities in a -- I would just ask you to
6 soften it so they don't ask you to use your words against
7 the consumers of California.

8 The order also talks about -- we need to
9 establish retail competition. In order to do that we need
10 transparent prices and price discovery. There are a number
11 of issues that come up in eliminating mandatory buy/sell.
12 We either need transparent prices in discovery or benchmark
13 prices. I realize that is not something you can do but is
14 something you need to be aware of.

15 Just on the \$150 cap, if the soft cap will become
16 a hard cap, so you need to revisit it if gas prices fall.
17 You also need to make sure reporting looks for exercise of
18 market power, at least a credible threat, not just turning
19 in numbers and be very leery of abuse and your -- you
20 should be looking for that within I am sure the ISO -- I
21 have some more but no time.

22 If your staff would like to talk at any point, I
23 am available.

24 CHAIRMAN HOECKER: We would very much like to

1 have you memorialize that and additional comments with the

1 record. You can submit them to the commission by November
2 22nd.

3 MS. KEHREIN: You will get them.

4 CHAIRMAN HOECKER: Great.

5 Mr. Warren Savage, executive director, Santee
6 Chamber of Commerce.

7 MR. SAVAGE: Good morning. I am Warren Savage.

8 We are located in San Diego, east county.

9 We have a crisis relating to power and this
10 crisis is everywhere in San Diego as we see it. We want to
11 know if you are listening and are ready to lead us.
12 Businesses both small and large, also nonprofit, as well as
13 citizens, are consumers and find themselves in an untenable
14 spot. They find themselves being strangled with unplanned,
15 unjust, unreasonable power rates. We are victims of these
16 prices. We have businesses facing the inability of bearing
17 this brunt of rising power costs, as well as the threat of
18 a looming balloon payment. Costs have risen 100,
19 200 percent as an average.

20 We urge, because of this situation, a positive
21 and definite action by the Federal Energy Regulatory
22 Commission. We request you to rid us of this unreasonable,
23 unjust rate. We have gone up to 18 cents from 3 cents many
24 months ago. We look to you to lead this effort.

1

There are more people to speak following me with

1 much more knowledge than myself, but I can tell you people
2 out in the field, individuals, customers, consumers of
3 electric power, find themselves having to make a choice
4 between those things that are providing life, as far as
5 food and other things, medicine, et cetera, to paying the
6 power rates. This is not fair to them.

7 It's not fair to us in the business community,
8 either, and we are finding we are losing our opportunity to
9 attract businesses in this area not only because of that,
10 as far as power itself, but the underlying effects that are
11 occurring because of it. It's a real drain on the economy,
12 a real drain on the citizens and we ask you to please take
13 positive action in this regard.

14 Thank you.

15 CHAIRMAN HOECKER: Thank you.

16 Mr. David Ish, who comes to us from the Escondido
17 Chamber of Commerce.

18 MR. ISH: Thank you for coming to San Diego and
19 hearing our concerns. This is the second time the
20 Escondido Chamber of Commerce has come before you to
21 speak. So far you have heard a unified voice from
22 representatives and citizens of San Diego County. They are
23 much more knowledgeable and eloquent on this issue than I.

24 We understand that you have a very complex issue

1 before you. As you investigate the long-term direction of

1 our energy situation, we must be assured we will receive
2 relief retroactively. Congressman Filner, that \$600
3 million has gone out of this economy. Where is it? Whose
4 pockets have been lined with gold? This is astronomical.
5 But the real story is in the human suffering that has taken
6 place and anxiety over the impact the FERC portion of the
7 rates will have into the years. 60 percent of the members
8 of the chamber have under 10 employees. This amounts to
9 some 3500 employees and families who are suffering and will
10 continue to suffer until you take steps necessary to
11 correct this problem.

12 By pointing this out, I don't discount the impact
13 on large businesses. The impact is just as severe. In
14 fact, an additional 400 members of the chamber accounts for
15 some 12,000 employees.

16 Everyone here is asking that you exert your
17 authority. Legislators are working to give you authority
18 if that is in question. In the meantime I suggest you
19 follow the old saying, it's easier to beg for forgiveness
20 than ask for permission, and solve this problem. If you
21 keep the consumers in mind as your primary concern, you
22 will have done your job well.

23 Thank you.

24 CHAIRMAN HOECKER: Thank you.

1

David Leiber, president of the Borrego Springs

1 Chamber of Commerce.

2 MR. LEIBER: Thank you, Mr. Chairman. Thank you
3 for taking your time to come here.

4 San Diego of Borrego Springs is a unique
5 community in San Diego County. We feel like we are the
6 bird in the tunnel, canary in the tunnel, if you will, the
7 warning canary that may be the first community to actually
8 topple if we can't get a hold on these electrical rates.
9 We are a small community of about 10,000 in the winter. We
10 have a core population of probably less than 2000 in the
11 summertime. The community's businesses provides services
12 and entertainment for the visitors while also providing
13 work for the full-time residents, schools for the children
14 and recreation for all.

15 Electricity rates are out of control. Businesses
16 can't afford to remain open in the summer season. If some
17 close this coming year -- and we had some close last
18 summer, we will have more hereafter. The people who work
19 here must work year around. They can't make enough in the
20 winter season to take summers off. Businesses serving
21 visitors, if they do close, are going to lose good
22 employees, and maybe the businesses that provide staples
23 for those employees will also be forced to close.

24 The school district, which now has 411 students,

1 will be greatly impacted, as most parents work year

1 around. As enrollment declines, school funding will
2 decline and teachers will lose their jobs. Numerous
3 churches will see their parishes decline proportionally.
4 We will become a winter vacation spot where there are no
5 services. Driving 70 miles to the closest place to fill
6 prescriptions or fill the gas tank or put food in the
7 refrigerator will be unacceptable.

8 We are seeing people in our town in the
9 summertime that, if they run their air conditioning, their
10 electric bills are greater than their mortgage payments.
11 We certainly plead -- the chamber has asked me to come here
12 to speak to you on behalf of the town to go ahead and take
13 action, to go ahead and do what is fair and equitable.

14 Thank you.

15 CHAIRMAN HOECKER: Thank you very much.

16 Mr. Warren Simon, executive director of the
17 Hillcrest Business Association.

18 MR. SIMON: Thank you, members of the
19 Commission.

20 I am Warren Simon, executive director of the
21 Hillcrest Business Association, a community about five
22 miles from this room. We have about 1050 members, most of
23 whom are small businesses. They range in size and category
24 from medium-sized restaurants down to small, very quaint

1 little flower shops. I speak to business owners every day

1 about problems and solutions in our community and people in
2 business. We expect and plan for normal, everyday types of
3 increases, rent, utilities, travel, overhead, et cetera.
4 But the price of electricity for several of our businesses
5 during July and August this year increased by an average of
6 about 50 percent of those I canvassed. These businesses
7 include specifically places like the City Deli, a
8 restaurant, and a postal service company, Mailboxes, Etc.,
9 and the bookstore. This rate is much too high. If someone
10 handed your panel member an office bill for twice the
11 amount you normally expect, you would raise some questions
12 and maybe convene a panel, I am sure.

13 But we feel that this is caused by a lot of
14 problems that are very complex. We know the issue has been
15 around for several months and there is not a simple
16 solution. One of my main points is even when businesses in
17 our community have taken all the necessary steps to reduce
18 energy, their bill still remains high, even higher than
19 what could normally be expected. When a natural disaster
20 strikes a community, people turn to FEMA for help. Who do
21 we turn to when a man-made, king-size problem like this
22 occurs?

23 On behalf of our community, we respectfully ask
24 you use your power and insight to find a way to make the

1 cost of living and cost of doing business a natural

1 increase rather than a man-made problem.

2 Thank you very much.

3 CHAIRMAN HOECKER: Thank you very much.

4 Steven Zolezzi.

5 MR. ZOLEZZI: Zolezzi.

6 CHAIRMAN HOECKER: Sorry. Executive vice
7 president, Food and Beverage Association.

8 MR. ZOLEZZI: Good morning. It's a privilege to
9 be before you this morning.

10 We are an association that represents restaurant
11 and clubs, over 11,000 businesses, here in San Diego
12 County. We all agree the California process is seriously
13 flawed, and that the overall problems with deregulation
14 turned out to be supply and transition; supply and demand
15 created the problem.

16 As you have made recommendations in your
17 proposals to change ISO and PX to provide flexibility in
18 the marketplace, those changes don't really address
19 transmission and supply to the full degree they should or
20 need to in the future.

21 Of the over 11,000 businesses in San Diego County
22 that make up the food and beverage industry, employing over
23 150,000 people, the impact of deregulation and increased
24 costs have had a devastating effect. Of those businesses,

1 a significant amount exceed the 100 kW cap under the

1 current legislation signed by the government in September,
2 so they are continuing to pay market rates outlined by
3 Senator Peace earlier, approximating 18 cents.

4 Those rates are putting people out of business,
5 and they continue to put people out of business. The
6 uncertainty of what the balancing account will or will not
7 do in the future, the uncertainty of where the caps will
8 reside as the CPUC continues to evaluate what is going on
9 in California, increases the current 6-1/2 cents to an
10 additional amount. Where is this money coming from? It's
11 coming out of the pockets of the people who operate the
12 businesses.

13 We operate in a very competitive market here in
14 San Diego County. To be able to go out and just wholesale
15 increase prices to compensate is not an option for many
16 businesses, especially businesses in our industry where we
17 do have such a competitive nature to what we do.

18 What you do, your focus today is on California.
19 Really, the focus is what you are doing across the nation.
20 As more areas in the country -- how are you going to be
21 able to help them? What kind of impact is it going to have
22 there as well? San Diego is not a good model for that
23 deregulation in the future certainly.

24 Your commission is not a new commission. You

1 have been around a long time. You knew that in San Diego

1 County, transmission and supply here in California were at
2 a premium. There should have been more anticipation of
3 those potential problems, not only by you at the federal
4 level but at the state level. We could sit here and we
5 could affix blame until we are all blue in the face, but
6 that doesn't solve the problem. What we need to do at this
7 point is go forward. We need to stop affixing blame and
8 look at long-term solutions, long-term solutions that take
9 into consideration that there are caps, that don't stymie
10 additional investment to come in and provide energy supply
11 and the addition of supply, transmission lines that then
12 enable us to have more access to different markets at peak
13 periods, not just off-periods, but especially at peak
14 periods.

15 This next summer we are expecting that things are
16 going to be much bleaker than they were this summer.

17 MR. BOERGERS: Would you conclude your remarks,
18 sir.

19 MR. ZOLEZZI: So we urge you to go boldly ahead
20 to make hard decisions, to come up with responses and
21 solutions that are long-lasting to help the market.

22 Thank you.

23 CHAIRMAN HOECKER: Thank you very much.

24 Steve McClary, principle of MRW & Associates.

1

MR. MC CLARY: Good morning and thank you for the

1 chance to appear before you today.

2 My name is Steve McClary. My firm, MRW
3 Associates, has been retained by the City of Chula Vista to
4 help it look at options it can pursue to provide assistance
5 and relief in the situation caused by the electricity
6 market and the events of the past summer.

7 You have heard, and I will echo, the concerns of
8 citizens and businesses in this region, the impact high
9 prices and volatility in prices have had on the region, the
10 discouragement of investment that is occurring, the
11 potential relocation of businesses, and of course, the
12 direct hardship to citizens.

13 In Chula Vista, the city, acting through its
14 elected officials and staff, has undertaken to look at a
15 broad range of options that might help. They are not
16 looking solely to the state or federal government to assist
17 them in the situation. That is the effort of which my firm
18 is a part. We are looking at options ranging from demand
19 management in the city itself, assistance programs for the
20 city, public/private partnerships, and potentially,
21 municipalization.

22 In looking at the options available to the city,
23 of course your actions are key, as are the actions at the
24 state level, and we are, therefore, vitally concerned with

1 what FERC does, where this goes.

1 We are also concerned that it be settled in an
2 expeditious fashion. We don't know where to go when we
3 don't know what the rules are, just like the differences in
4 citizens of this area. So we would urge you to move ahead,
5 not get bogged down in state and federal jurisdictional
6 wrangles. I know that has been an area that has been of
7 concern throughout this restructuring effort. The delicate
8 dance between state and federal jurisdictions has been a
9 tough one, and it looks as though the potential for
10 stepping on each other's toes has risen substantially in
11 the past few months.

12 Finally, I would offer that the City of Chula
13 Vista, in looking at this, does have an additional
14 perspective in that it is host to an aging power plant, the
15 South Bay plant, which will be replaced sometime in the
16 next nine years. It will be replaced, we would hope, with
17 a more efficient and more environmentally acceptable plant
18 than the current plant. And I think it's clear that, from
19 the city's point of view, replacing that plant sooner
20 rather than later would be helpful both for the city and
21 for the situation in the electricity market in general.

22 San Diego can use local generation, the market
23 can use additional supply, as we have heard many times.
24 And to that end, any remedies that are adopted we would

1 encourage you keep in mind also the need to supply

1 sufficient incentive for repowering, replacement and
2 construction of new supply, which is part of the solution
3 to the problem we are in.

4 Thank you.

5 CHAIRMAN HOECKER: Thank you very much.

6 Do you have any questions?

7 COMMISSIONER MASSEY: No.

8 CHAIRMAN HOECKER: I think, in the interest of
9 time, we are going to have to move along. I want to thank
10 you all. I want to ask, for the record, Ms. Kehrein, who
11 the Energy Users Forum's members are?

12 MS. KEHREIN: A group of consumers in California
13 that -- there's oil, retail, there is high tech, there is
14 industrial, manufacturing. But I fill in with these folks
15 sitting on the side who probably don't want to be
16 identified in the press tomorrow, so I'll talk about it
17 off-line if you want.

18 CHAIRMAN HOECKER: It's always helpful for us to
19 know who we are talking to.

20 MS. KEHREIN: I can handle that. The companies
21 normally have to preauthorize press releases, so they would
22 want anything I said to be attributed to corporate versus
23 their energy folks, so --

24 CHAIRMAN HOECKER: Maybe you will have more time

1 to puzzle through that in your written comments.

1 Thank you all very much. Thank you for coming.

2 Let's move on to our next panel of business

3 consumers.

4 We are starting with the representative from

5 Sempra Energy. Are we all present and accounted for?

6 Good. Let's turn first to Mr. Ed Guiles, representing

7 Sempra.

8 MR. GUILLES: Good morning, I am Ed Guiles, group

9 president of Sempra Energy and Chairman of Sempra's

10 California Utilities [inaudible].

11 Chairman Hoecker and Commissioner Massey, we

12 appreciate your coming to San Diego, for a second time in

13 the past six weeks, to listen to those who are affected

14 most dramatically by the high wholesale prices. We

15 appreciate the attention you are giving this crisis.

16 The fact a retail rate cap exists for residential

17 and small commercial customers under Assembly Bill 265 --

18 unjust and unreasonable. Amazingly, as we approach the

19 winter months, wholesale electric prices in California are

20 still substantially higher than what could reasonably be

21 expected.

22 We have compared the last 12 days of September

23 with the first 12 days in April, with an average load of

24 25,700 megawatts, understanding we have units out and so

1 forth. Prices went from an average of \$27 a megawatt-hour

1 to \$110, a fourfold increase at about the same load level.

2 We understand there are maintenance issues. But that is a
3 substantial increase. As you have heard or will hear
4 today, the large commercial customers, some members of this
5 panel, have no retail cap, yet continue to pay excessive
6 wholesale commodity rates.

7 We urge the FERC to order refunds based on
8 wholesale rates that are still too high under any
9 reasonable standards. If the FERC does not find a way to
10 allow California consumers to recoup these high costs, the
11 California experience will create a chilling effect on the
12 pursuit of energy deregulation by other states. You must
13 take aggressive steps to modify the market design in
14 California, to modify the market design in California other
15 than described in the proposed order. Take even more
16 aggressive steps which would include immediate adoption of
17 mechanisms utilized in other regions of the United States
18 where deregulation has been more successful.

19 We strongly support FERC's recognition that --
20 but the state of California must also do its part to solve
21 the problem, especially with respect to expediting and
22 siting of new facilities, more aggressive management
23 programs, and establishing centers for the utilities to
24 participate in a forward market.

1

On infrastructure, a case in point. SEG is

1 facing local opposition to the construction of high-voltage
2 transition lines to provide a critical interconnect between
3 SEG and Edison Riverside. This line will be necessary by
4 2004 to ensure electric reliability and protect against
5 curtailments.

6 On procurement, you indicate you favor more
7 forward contracting by the California utilities. We can do
8 that, but the state policymakers must provide utilities
9 with all the physical and financial tools to be effective
10 players in the market and establish a set of upfront
11 reasonable business criteria against which the utilities'
12 performance can be measured. However, unless you take
13 aggressive action, it is not realistic to expect reasonable
14 prices in the forward market.

15 We recognize FERC does not have direct
16 jurisdiction over all these issues. However, you can
17 provide incentives for the expansion of electric
18 transmission facilities. We also believe collaboration by
19 all stakeholders, including FERC, state policymakers and
20 others, will be needed to address the existing supply and
21 demand imbalance and bring relief to the citizens of
22 San Diego.

23 We look forward to working with you. Thank you
24 very much.

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(The document follows:)

1 CHAIRMAN HOECKER: Thank you very much.

2 Now, John Wiederkeher from Certified Metal Craft,
3 Inc.

4 MR. WIEDERKEHER: Again, thanks for the
5 opportunity to present our case to you.

6 Enough has been said about what we think is wrong
7 with the market. Really I wasn't too enthused about
8 sitting in front of another governmental agency that really
9 won't do anything about the problem. So anyway, we know
10 the Power Exchange and ISO need to have more attention paid
11 to them, along with some drastic changes in what is going
12 on in the structure in the electricity market here in
13 California. By your own admission, you found it seriously
14 flawed. We really are here just to try and get some
15 resolution.

16 I have heard through the media and through months
17 of trying to stay on top of what is happening because this
18 is very important to 40 employees that we have with us as
19 well as it's relative to every ratepayer in San Diego
20 County. You know, we have information that states that
21 it's unfair, it's unjust. In the U.S. Code, I believe it
22 does have a section in there that does state that
23 refunds -- if found to be unfair, unjust rates were
24 charged, refunds can be given to the people who have been

1 taken advantage of. And I believe San Diego County is

1 right there.

2 Helen Keller said to be blind is bad, but worse
3 is to have eyes and not see. So we are hoping you will
4 open your eyes and try to help us here in San Diego.

5 I do have some visual evidence here of what it
6 has done to our company, 20,000 a month to 23,000 a month.
7 It's tough to expand and take care of the people that keep
8 the economy going.

9 Thank you.

10 CHAIRMAN HOECKER: If you would like to submit
11 those for the record, we would be happy to have that. You
12 can give it to our court reporter.

13 (The document follows:)

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1 Thank you.

2 Pat Leyden, Facilities & Support Service.

3 MS. LEYDEN: Thank you for the opportunity to
4 speak. I would like to briefly introduce Children's
5 Hospital to you and describe the impact of the escalating
6 energy prices on our operation, and quickly close with some
7 comments directed to FERC's authority and the actions we
8 hope you will consider taking.

9 First, a little bit about Children's Hospital.

10 We are the region's largest pediatric hospital and health
11 center. Each year we provide care to the sick children in
12 San Diego and Imperial Counties. We are a nonprofit
13 corporation. To put numbers behind that, each year we
14 serve 20,000 hospital patients a year, 50,000 emergency
15 department patients, close to 200,000 ambulatory patients,
16 the care of cancer, treatment of premature babies, cranial,
17 facial and cardiac surgery.

18 To make that real for you, almost every day of
19 the year some child has open heart surgery at Children's
20 Hospital. Perhaps an even better way to put economics into
21 this discussion is to tell you that, at Children's, we put
22 excellence of care above economics. No child is turned
23 away because of inability to pay for care. What that means
24 to us is that every year, over 30 million in unreimbursed

1 or underreimbursed health care is provided to the children

1 of this region. We are an inelastic business. We cannot
2 pass along the increased costs of energy prices.

3 That brings me to power. Children's is one of
4 the county's largest energy purchasers. Last year, when
5 power was sold at 3-1/2 cents a kilowatt-hour, our annual
6 budget was just under 900,000 for energy. This year, in
7 the month of June, my energy bill jumped from 80,000 a
8 month to over 250,000. That means for us over a million
9 and a half in unanticipated energy charges in this next
10 year with the market continuing to perform as it is. Those
11 are dollars taken from health care. Those are dollars
12 taken from the sick children of the region.

13 Now I would like to talk about FERC and FERC's
14 authority. It seems to me as Americans we have a unique
15 perspective on deregulation. We have over 20 years'
16 experience, starting with the aviation industry, the phone
17 industry and moving on to the energy industry. We are not
18 freshmen at this business. We are world leaders. We set
19 the standard for all the developing countries of the
20 world. We understand the bumps in the night that occur
21 through transition and also understand the need to monitor
22 and provide safety nets for consumers.

23 I say this obvious thing to you because it seems
24 to me that in all the rhetoric of how markets perform, the

1 basic goals of the marketplace have to be remembered and

1 provided. There are three basic goals of deregulation:
2 stable pricing, reliable power and more clean, renewable
3 energy. This market is failing on all three fronts so
4 far. There has been a lot of sound and fury in California
5 about this. I describe it as such because today's rate cap
6 has done little more than stop the bleeding on the
7 patient. As long as I have a debt due in 2002, a real debt
8 escalating with interest on the note, I have no solution
9 before me in my industry.

10 We need FERC to do the following: First,
11 remember the three basic goals in the marketplace. You
12 need to take action to stabilize the California market.
13 You need to establish, in my opinion, a significantly lower
14 soft cap than the one currently proposed. You need to act
15 in concert with the PUC to correct the California market
16 and before the woes of 3-1/2 million people turn into the
17 woes of 35 million people. To order full disclosure from
18 all the markets to find out if there was gouging, as we
19 believe; finally, to order the refund many have asked you
20 for today. And then as a watchdog, do more than bark. In
21 the end, Children's mission is to heal and restore the
22 health and developmental potential of the region. It
23 strikes me FERC's mission is the same, to heal and restore
24 the health and wealth potential of California's energy

1 market.

1 CHAIRMAN HOECKER: Thank you very much.

2 Now, Bruce Simonton from UniquePatents.com.

3 MR. SIMONTON: Thank you. With all due respect

4 to all you have heard today for the benefit of consumers, I

5 would like to take a moment and turn 180 degrees and look

6 at generators. FERC is correct. There should be no rate

7 refunds until generation idle time costs become a planned

8 part of deregulation of consumer rates. Removing

9 generation idle time costs from the old monopoly utility

10 rates was how deregulation was supposed to lower rates and

11 in a greatly expanded competitive marketplace for the

12 benefit of the consumer.

13 As an example, implementation of deregulation law

14 was supposed to change cost-based prices such as 3-1/2

15 cents down to 1-1/2 cents per kilowatt-hour. Who was

16 supposed to pay the 2-cent difference? Not the consumer,

17 not the stockholder, but the independent generation company

18 itself, with no continuous source of revenue.

19 At least the idle time cost of generation plants

20 of the monopoly utilities were covered by continuous

21 sources of revenue regardless of the season. Therefore,

22 independent deregulated generation, your independent

23 companies, they are panicking with super-high wholesale

24 prices one way or another.

1

You worry about high rates and blackouts. They

1 worry about individual plant survival. Their idle time
2 costs increase as competition increases.

3 Generation would welcome deregulation cost-based
4 pricing schemes as we have already heard about this morning
5 being recommended. But they must include a growing
6 component for idle time cost, just as they did as monopoly
7 cost-based prices or super-high rates will probably
8 continue one way or another.

9 Again, FERC is correct about block forward
10 contracts. All base load must be purchased on block
11 forward contracts to provide consumers the best stable
12 rates. The longer those contracts are, the better the
13 rates. But the contracting utility must be protected by
14 FERC eliminating the undercutting of energy service
15 providers. Otherwise utility companies can't afford to
16 help bring rates down.

17 Utilities take the risk of getting stuck with
18 costs of higher-priced contracts while energy service
19 providers steal their customers with lower rates during the
20 duration of the utility company's contract. SDG&E could
21 only afford to make a secret contract to protect their
22 interests while PG&E made their five-year contract with the
23 benefit of fixed high consumer rates for at least the next
24 two years.

1

Now, we heard this morning -- I am going to

1 conclude. We heard this morning about earnings. I
2 appreciate that. With all due respect to who we heard
3 from, I would just like to suggest that, yes, generation
4 plants earn huge earnings. However, there were no
5 dividends, no unusual dividends given stockholders, one.

6 And two, oddly enough, no significant growth in
7 the stock value. Wonder if anyone's ever considered why.
8 The stockholders themselves found out from their own
9 companies where that war chest was going to be spent. It
10 wasn't on new plant construction. It wasn't even paying
11 off what they bought. It was for dealing with future idle
12 time costs. Thank you.

13 CHAIRMAN HOECKER: Thank you very much. Mr. Dan
14 Cumming from American Metal Processing.

15 MR. CUMMING: Thank you. I appreciate your
16 letting us speak to you again. First of all, I am
17 considered, I guess, a small business, because I have got
18 17 employees. Of course in all the federal regulations, a
19 small business is usually more than a hundred or 500
20 employees. But because we use over 1500 kilowatt-hours per
21 month we are considered all of a sudden a larger business,
22 so we got no refunds, no rebates. So we are stuck with our
23 costs.

24 Our costs went up over \$2000 a month for 17

1 employees. We have to compete with other metal finishing

1 businesses that are only 50 or 60 miles north of us because
2 they have got cheap hydroelectric power. We can't raise
3 our prices. We have got fixed costs, rent, insurance
4 costs, so about the only way to survive is the immediate
5 reduction of jobs. That is about the only thing we can do
6 in order to survive through this particular crisis.

7 It's just not just or reasonable that we have to
8 compete with these people that are getting much cheaper
9 rates than we are. I want to beg to differ with the
10 gentleman who just spoke here that, boy, some of the stock
11 prices for utility companies have done quite well. Duke
12 Energy since May has increased 50 percent while the Dow of
13 course has been stagnant. According to the report put up
14 to the governor by the Electric Oversight Board and Public
15 Utility Commission, in April, May and June, nine of these
16 companies made \$2.8 billion in profit.

17 Dianne Jacob just got the new data for the third
18 quarter, July, August and September. They made \$2 billion
19 in profits. That is 9.6 billion annually. One of the
20 reasons they don't want to give us rebates is the
21 government is probably going to get 4 billion of that in
22 taxes, so why would they want to give it back to us?

23 There is an attitude here that, hey, this is not
24 your money, it's our money now. Of course the people in

1 Washington, whoever gets elected, is going to decide who

1 thinks they should spend that \$4 billion better than we.

2 And we have been screwed. So I think you ought to give us
3 our rebate, give us our money back before they spend it on
4 some other goofy thing.

5 And let's also kind of reduce the requirements
6 for generating power plants. If we need the power, if you
7 think it's going to get less power, which of course the
8 Public Utilities Commission thought, that, oh, we didn't
9 expect excessive demand, I mean, they need to get some new
10 people in there, too.

11 I think also too that with the money, tax, the
12 money and profits they are making, whatever happened to the
13 windfall profits or windfall profits tax that the oil
14 companies got stuck with? We ought to do the same thing
15 here, too. I am a businessman, too. I think they should
16 be making a profit but not screwing us. Thank you.

17 (Applause.)

18 CHAIRMAN HOECKER: Thank you. John Morse,
19 Qualcomm.

20 MR. MORSE: Thank you, Mr. Chairman. I am John
21 Morse, manager of facilities for Qualcomm. Let me thank
22 you for the opportunity to offer the following comments on
23 behalf of the company. Qualcomm is a pioneer in CDMA
24 digital wireless technology as well as other communication

1 equipment for the transportation industry. Most of our

1 offices, laboratories are located in San Diego. Our
2 facilities and employees will be impacted by your
3 decisions.

4 Qualcomm has been a proactive, has been proactive
5 in the energy reduction and conservation programs for all
6 our facilities. We have also installed thermal storage
7 systems and make use of cogeneration for power generation
8 heating and cooling.

9 All of these programs require capital investment,
10 but they have helped us in controlling energy costs.
11 Because of this experience we recommend these programs
12 because they work.

13 We encourage this commission to support demand
14 response programs, local generation and cogeneration
15 interconnections. Qualcomm has supported the concept of
16 deregulation in the electric industry because of its
17 promise to ensure future availability of electric
18 generation at stable competitive prices.

19 After the experience of the past six months
20 electric prices have not resulted in being stable or
21 competitive. And the future reliability of electric power
22 is in question. We support the Commission in taking action
23 to correct the program flaws in the operations and policies
24 of the PX and ISO organizations.

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We must also comment on the Commission's position

1 in its November 1st news release, stated the San Diego
2 residential electricity customers have been exposed to
3 economic risk and financial hardship. This comment is true
4 and the hardship continues. We must point out the fact our
5 small business suppliers in the community and our employees
6 are still at risk because of future bills that will be due
7 on the past charges as a result of the flawed energy
8 wholesale market.

9 We ask the Commission to reconsider its position
10 and to do more to recover the overcharges because of the
11 flawed energy markets. Thank you.

12 CHAIRMAN HOECKER: Thank you. Last, Carl
13 Hoffman, director of facilities, Tri-State Medical Center.

14 MR. HOFFMAN: Good morning. Tri-City Medical
15 Center is a 397-bed acute care hospital providing health
16 services to the cities of Oceanside, Carlsbad and Vista in
17 the northern county of San Diego.

18 Since June of 2000 to October of 2000 the center
19 paid \$698,000 for electric energy. This compares to
20 \$180,000 for the same time frame the previous year. This
21 is a 388 percent increase in electric energy costs to the
22 hospital.

23 At the same time, the total amount of electric
24 energy used by the hospital declined 5.6 percent. In other

1 words, the medical center in five months paid \$518,000 more

1 in electric energy costs and consumed 5.6 percent less
2 electricity during the same time period, comparing the same
3 time periods, 1999 to 2000.

4 The 6.5 cent price cap is a short-term fix. It
5 is estimated consumers will have to pay back hundreds of
6 millions of dollars to the utilities when the balloon
7 payment is due and payable in the next few years. This is
8 not a solution to the crisis we are facing.

9 Another issue with hospitals in general is that
10 our payer base is a fixed base and we are unable to pass
11 increasing operations costs of the hospital along to the
12 fixed payer base. 95 percent of our revenues are derived
13 from federal, state and other managed care payers at a fix
14 reimbursed. We urge the Federal Energy Regulatory
15 Commission to order refunds to the consumers of San Diego
16 County and to dig deeper into your investigation regarding
17 energy rates in San Diego County.

18 Thank you for allowing me to speak today.

19 (The document follows:)

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1 CHAIRMAN HOECKER: Thank you, sir. This has been
2 a very helpful panel, gentlemen and Ms. Leyden. I thank
3 you for being here and sharing your views with us.

4 Please, feel free to rise and extend your
5 comments and submit them for the record before November
6 22nd. I am particularly interested in, of course, Sempra,
7 SDG&E expanding on their discussion of what tools they need
8 from the state of California as well as us to be able to
9 manage this situation better themselves, improve this
10 market. When you talk about incentives to expand
11 transition, how that would work and where and what the
12 cost, both economically and environmentally, might be in
13 that and how that might or might not relate to the siting
14 of additional facilities or ability to site additional
15 facilities in this state.

16 And I think there are an awful lot of questions,
17 an awful lot of the matters in which you are kind of the
18 epicenter of concern here, and interest. We want to help
19 you succeed on behalf of the consumers of this city.

20 Please, accept our thanks for your being here.
21 And we are going to take about a 10-minute break, give our
22 reporter a bio break as someone said, and we will resume
23 promptly at 20 minutes of 11:00. Thank you.

24 (Recess.)

1

CHAIRMAN HOECKER: We have another panel we would

1 like to hear from this morning. Time permitting before the
2 Governor arrives after this panel has concluded, we would
3 be happy to hear from anyone in the audience who cares to
4 take the podium over there and give us your best thoughts
5 and insights on the situation.

6 Let's begin with the last panel. Carol Voolker,
7 chair of the subcommittee of the American Association of
8 Retired Persons.

9 MS. VOOLKER: Speaking for the 2.9 million AARP
10 50-plus membership in California, the majority of whom are
11 age 65 and older, they are retired many of them, a large
12 number on fixed incomes, vulnerable, frail, ill. These
13 people are the least able, least sophisticated to deal with
14 rate volatility.

15 You have already heard many of our small
16 businesses have suffered irreparably, so have large
17 businesses in San Diego. We have heard from a medical
18 center this morning and also a Children's Hospital. There
19 is also Paradise Valley Hospital in the southern part of
20 the country, it's a 600-bed facility that serves the
21 indigents, low-income, underinsured, uninsured. They saw
22 their rates go from \$125,000 to \$350,000. They were unable
23 to pay. They came before the San Diego board of
24 supervisors and said what do we do? By law you can't close

1 us down.

1 There have been a lot of other problems,
2 especially with our seniors in San Diego County. You may
3 not be aware of some of the problems they are suffering.
4 They don't know whether to pay for their prescription
5 drugs, buy gasoline for the cars or pay their electric
6 bill. It's a real problem.

7 The electric power rate crisis in the end has
8 caused many of us to lose confidence in the Federal Energy
9 Regulatory Commission. The federal agency designed to
10 protected us, to be our advocate, you have failed in your
11 duty so far to date.

12 San Diego being the first in the nation to have
13 deregulation, we look to you. You could be the heroes, to
14 your families and the rest of the nation, what not to do
15 when electric power is deregulated at the wholesale level.
16 You have the authority. Just do it.

17 Thank you.

18 Thank you.

19 CHAIRMAN HOECKER: Thank you very much.

20 V. John White, director of CEERT.

21 MR. WHITE: Thank you, Mr. Chairman. We have
22 been an active participant in the debates in California
23 since 1990. Since '97 I have served as a member of the
24 Board of Governors and my colleague, Richard Ferguson,

1 serves as a member of the board.

1 First, I would like to commend the Commission for
2 its recent recognition of the problem -- the market
3 response, this has not been something that has been present
4 as much as it needs to be. We appreciate that you are
5 moving towards that position.

6 We have two areas we would specifically like to
7 talk about this morning. One is the issue of the utility
8 procurement and the other is the issue of governance and
9 accountability.

10 With respect to governance I think it's fair to
11 say that the state concept, the state and the FERC agree at
12 least with respect to ISO that the [inaudible] needs to be
13 supplanted by an independent board, but I think it's a
14 terrible mistake to not recognize the legitimate role of
15 the Governor and state legislature in that appointment
16 process. I believe we could have moving in this next
17 session of the legislature, in December or certainly by
18 January 16th, proposed legislation to create an independent
19 board, but I think the appointment power needs to rest with
20 the Governor and legislature. I think it's vital for the
21 credibility that the state's legitimate interests be
22 recognized. I think that is an important clarification
23 that needs to be made.

24 Secondly, we would also like to suggest the state

1 of California is far more than a party to these proceedings

1 and that the reliance on ex parte rules to prevent direct
2 discussions between the Commission and state of California
3 is a mistake. We think the state is not only represented
4 by bipartisan political representation, but in this matter,
5 has all of the responsibility in many ways for implementing
6 this situation, particularly with respect to retail rates,
7 as well as with respect to the environmental requirements.

8 The environment is not something, is not a word
9 that is mentioned in the Federal Power Act. However, the
10 environment imposes real costs on the people of
11 California. We are burning oil at the North County plant
12 today I understand in Encino because the gas is not
13 available. That is a cost being imposed.

14 There are also issues with respect to market
15 power with respect to the environmental damage the
16 generators have vis-a-vis the new generators. I think it's
17 important we embed in the procurement process going forward
18 recognition of the environmental consideration. This is
19 where the order appears to give the utilities unfettered
20 authority to proceed with forward contracts without roles
21 and responsibilities for Public Utilities Commission to
22 oversee those purchases. The utilities remain a default
23 provider for most of the retail customers in California.
24 The environmental consequences of that procurement is

1 something that only the state can recognize, and it's a

1 very important part of the discussion.

2 Lastly, I think it's important as we reflect on
3 the ISO's responsibilities. There was a comment earlier
4 that the ISO is the air traffic controller and need not to
5 have interference with those operations from the political
6 authorities. I really disagree with that, having served on
7 the ISO. There are significant policy questions that are
8 coming before us. In many ways we are not just air traffic
9 controllers but we are also building runways and assigning
10 seats. I think the implications of that set of authorities
11 is important for the Commission to recognize what is at
12 stake.

13 Last observation about price caps. I voted with
14 the majority to support the price caps. However, I think
15 it's important to note the ISO in all its decisions has
16 voted to exclude demand bids from those price caps. I
17 think it is important that that policy be continued and
18 recognized in the final order.

19 I also think that the comments that you have
20 heard today from the public and from the elected officials
21 need to be given as much status as they can and if in fact
22 we require institutional relationships, that those
23 institutional relationships be negotiated and agreed to by
24 the state rather than imposed. Thank you very much.

1

CHAIRMAN HOECKER: Thank you. John, I hope you

1 have an opportunity to enlarge on that comment in writing,
2 particularly with respect to the relationship between
3 demand bidding and soft cap and so forth. Could you do
4 that?

5 MR. WHITE: I will. I would also remind the
6 Commission, talking about the state of California's failure
7 with respect to [inaudible] but the Commission is well
8 aware there was another matter before the Commission
9 involving 1300 megawatts of new gas that came about
10 [inaudible] that decision by this commission to acquire
11 those 1400 megawatts basically preempted the state of
12 California, was the beginning of the crisis from the state
13 standpoint.

14 So when we reopen the debate about procurement we
15 know we are not coming back to reopen the VRP, but the VRP
16 when the resources were to be acquired, which was
17 overturned, in the range of 3-1/2 to 6 cents for an
18 excellent portfolio on long-term resources. Now that is
19 20/20 hindsight but illustrates why we need to work
20 together to provide that fix, I have certainty. Thank
21 you.

22 CHAIRMAN HOECKER: Thank you. Now we will hear
23 from Michael Shames of UCAN.

24 MR. SHAMES: Thank you. What I will do is focus

1 on two issues that may not have been talked about thus

1 far. First, misery loves company. San Diego has an energy
2 crisis. You have a crisis of your own, a crisis of
3 confidence. When we embarked upon market-based rates you
4 ensured us you would have the ability to patrol, monitor,
5 to effectively maintain fair and reasonable rates in that
6 wholesale market. You admit in your report you have failed
7 to do so. You need to reestablish the faith and confidence
8 of the stakeholders, being the consumers, and the states
9 and the utilities that you can do the job. So thank you
10 for sharing the crisis with us. You do have a crisis to
11 deal with.

12 Secondly, I urge you not to fall into --
13 actually, you know what, let me go back. There is a fact
14 that I don't believe has been entered into the record you
15 should be aware of. Shortly after the issuance of your
16 proposed decision at the beginning of this month the
17 forward contracts that were being talked about and offered
18 to utilities by generators changed materially.

19 As I understand it, talking to those people in
20 the utility industry, the prices of those forward contracts
21 went up. They went up shortly after your proposed
22 decision. Your proposed decision sent a message. The
23 message was that the position had no hammer. That you are
24 pretty aware of the concept of light-handed regulation, I

1 am sure.

1 As you know, in that light-handed regulation, if
2 you are going to allow a market to function in a
3 light-handed fashion and that market dysfunctions, you must
4 show, if not use, the hammer necessary to remind the market
5 that you will not tolerate market abuses. Your proposed
6 decision says in effect we have no hammer. We have no
7 means by which to order refunds. We have no methodology by
8 which we can establish what is unjust and unreasonable.
9 Instead, it appears to rely on a Potter Stewart standard of
10 unreasonable rates, that is, we are not sure how to define
11 them but they look unreasonable.

12 I think the Commission needs to show the hammer
13 and use that hammer to remind the market how markets
14 function. And in deregulated markets, when a participant
15 in a market makes a mistake, generally the result is they
16 go out of business. They are gone. That is the reality of
17 the market. Don't fall into the trap regulators often fall
18 into, that they are protecting companies that make
19 mistakes, in this case they made mistakes, charged far more
20 than was reasonable.

21 Show them what the market shows them using the
22 hammer I believe you have, and I think Senator Peace
23 explained effectively, you have the ability to do that.
24 Make the generators and marketers prove that you don't.

1 Thank you so much for your time.

1 CHAIRMAN HOECKER: Thank you. We have Massie
2 Holland.

3 I don't have an organization listed. Do you --

4 MR. HOLLAND: No. Actually I prefer Max. I am
5 an individual ratepayer. Like hundreds and thousands of
6 other people this past summer I had to make choices on what
7 bills to pay and what bills to delay. I want to thank you
8 for the opportunity to speak before you today.

9 First, I fundamentally disagree with the concept
10 of deregulation. The results of this summer empirically
11 demonstrate the fallacy of deregulation. You are here now
12 as a result of that fallacy, in an attempt to bastardize
13 the process by heavily regulating deregulation.

14 How can you sit there and speak of competitive
15 market, when ratepayers don't know what price they are
16 paying until after purchase? I'll offer you all a similar
17 deal. I work in the airline industry. Give me a call the
18 next time you need to fly. Give me your credit card number
19 and you'll get your ticket from A to B. But, you won't
20 know what you've paid until you get your statement next
21 month. Sure, you may have purchased a month ahead and you
22 know you will pay less than if you had to fly tomorrow,
23 kind of like demand response. But that's all the
24 information you have prior to purchase. That's a really

1 stupid idea, I'm sure you'll agree. But that is exactly

1 what you expect the ratepayers to live with.

2 Competition requires two things, choice and
3 information. We get neither, or such limited as to be next
4 to useless. I remind you, SDG&E, PGE and SoCalEd are not
5 the consumers! As "pass through" providers they have no
6 incentive to hold down prices. On 10 November an article
7 in the San Diego Union Tribune reveals that SDG&E has
8 signed a long-term contract for electricity. But they do
9 not reveal with whom, for how long, or for how much!
10 Ratepayers have no information or choice. Where is the
11 competition to which you so blithely refer? I not so
12 humbly suggest that you all go back to school and study
13 Econ 101.

14 Fix this by returning to full regulation.

15 As we all know, electrical supply is like
16 building a highway. Excess capacity for rush hour even
17 though it is not needed for most of the day. In pure
18 economic competition, where marginal costs are relatively
19 inelastic, where is the incentive to overbuild supply?
20 The only one I know of is to make marginal prices highly
21 elastic. To the great detriment of ratepayers!

22 This problem was not created by the ratepayer,
23 but by bureaucrats, legislators and suppliers. Do your
24 duty under the FPA to protect the ratepayer.

1

FERC's mandate is to make sure the ratepayer pays

1 the lowest possible price, subject to allowing suppliers a
2 just and lawful profit to insure ample generation capacity.
3 I believe the phrase in the FPA is "protect ratepayers from
4 market power." With the predatory prices charged this
5 summer, the new owners of the plant just up the road paid
6 off that purchase in two years instead of the 20 that a
7 just and lawful profit would allow. But you have the
8 audacity to say that such predatory charges should not have
9 to be refunded? Where is the mandated ratepayer
10 protection?

11 On page 39 of the market order, Section B,
12 "Refund Liability," concerning refund liability. The
13 argument made in the last paragraph is a normative economic
14 argument -- opinion. The empirical evidence invalidates
15 that argument. The rates, per your own determination, are
16 unjust and unlawful, but your staff and the Commission
17 state that refunds can't be made preceding 2 October 2000.
18 This is not what FERC is mandated by the FPA. Ratepayer
19 protection is before supplier profits. Set precedent if
20 need be.

21 Protect ratepayers from market power, as is your
22 duty. Don't compound past failures with negligence. Thank
23 you.

24 CHAIRMAN HOECKER: Thank you. Al Tschaeche.

1

MR. TSCHAECHÉ: My name is Al Tschaeché. I live

1 at 1250 Orchard Glen Circle in Encinitas, California.

2 My comments pertain to the order proposing
3 remedies for California wholesale electric markets issued
4 November 1, 2000 in Docket EL00-95-000. They also pertain
5 in general to the federal government's desire to deregulate
6 the electric industry and to the lack of electrical supply
7 in California. Given only three minutes, I intend to
8 submit further written comments by November 22, 2000. Am I
9 correct in assuming the November 22 date means the comments
10 must be postmarked November 22?

11 First, FERC has proposed immediate remedies,
12 structural reforms and issues entities other than FERC
13 should address. If all of the remedies, reforms and issues
14 are implemented, what assurance does the California public
15 in general and the people of San Diego County in particular
16 have that the resulting system in toto will function so as
17 to accomplish FERC's stated purpose to assure "a reliable
18 supply of (electrical) energy at the lowest reasonable
19 rate?" Clearly the system we have does not do that.

20 Accordingly, I hereby request FERC to do a risk
21 analysis that will analyze all the situations that are
22 reasonably possible when the implementation is in process,
23 and when it is finally complete, and will demonstrate that
24 the proposed fix will truly result in the purpose being

1 accomplished. Such risk analyses are routinely performed

1 for systems such as nuclear power plants so that engineered
2 safeguards can be implemented to preserve public health and
3 safety and safety of the environment. The electrical
4 generation and distribution system in the United States is
5 very complex, as is a nuclear power plant. The result of
6 an electrical meltdown into blackouts or into unreasonably
7 high prices can easily result in real human deaths and
8 economic hardships.

9 FERC should perform work to demonstrate that it
10 has considered all the reasonably probable things that
11 could go wrong in the electrical system when FERC's
12 proposed fix is implemented. The result of that work must
13 be to demonstrate the errors in the system, both systematic
14 and human, will not result in shortages or high rates.

15 Simply to say, well, let's try these fixes and
16 see if they work, is not good enough. The public needs
17 much more assurance than that. Clearly such a risk
18 analysis was not performed before last summer when my
19 electric bill went up by a factor of three. Please don't
20 make the same mistake again.

21 These remarks are directed to the regulators and
22 lawmakers in California also. Regulators and lawmakers are
23 part of the reason we are in this mess. They need to do a
24 better job. A risk analysis would go a long way toward

1 doing a better job.

1 Three last points. 1, the biggest reason we are
2 having problems in California is lack of supply. The
3 people of California are the main reason for the lack of
4 supply. They won't let any new major power plants be built
5 in the state. It won't matter what FERC or others do to
6 try and increase the supply, no new plants will be built
7 until the people of California unite in their desire to
8 have a sufficient supply of electricity. I can provide
9 veracity for that comment if you like. Therefore, FERC and
10 other governmental agencies must begin immediately a
11 program of public education with the intent to have the
12 public unite in its desire for increased electrical supply.

13 2, given the global warming problem, only nuclear
14 plants are appropriate for the new supply. When entire
15 generating systems are considered, from mines to waste
16 disposal and including manufacture of the plants and
17 equipment to generate electricity, only the nuclear system
18 generates the least amount of greenhouse gas. Fossil fuels
19 are the worst and even hydroelectric systems generate such
20 gas. I can provide references for the veracity of that
21 statement if desired. Therefore, FERC and other government
22 agencies must do everything they can to provide a
23 regulatory climate that expedites the construction of
24 modern, safe nuclear power plants Part of those activities

1 must include public education as to the demonstrated safety

1 of nuclear plants.

2 3, finally, as I requested in my August 12, 2000
3 letter to Secretary Boergers, which I make part of my
4 testimony today, FERC should immediately propose
5 legislation to Congress that reregulates the electric
6 industry in the United States. Deregulation of electricity
7 has never worked where it has been tried, does not work,
8 will never work, cannot by its very nature work and should
9 be relegated to the ash heap of horrible ideas.

10 If FERC thinks it does not have the statutory
11 authority to do the requested work it should request that
12 authority from Congress.

13 (The document follows:)

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1 CHAIRMAN HOECKER: Thank you. Mr. Percy Myers.

2 MR. MYERS: Thank you, Mr. Chairman, for the
3 opportunity to address you this morning. My name is Percy
4 Myers, spokesperson for BAE Systems, a local major defense
5 contractor with 1400 employees located in the El Rancho
6 County area of the city.

7 What we have experienced this past summer with
8 regard to electric rates differs only in degree to those
9 experiences expressed by those who appeared before you this
10 morning. In one year, ending in July of this year, our
11 electric rate was \$250,000. What is important about that
12 is that although we had that tremendous rate increase which
13 represents a \$165,000 increase in one year, we did not have
14 a concurrent increase in usage.

15 We urge you to use the authority you have to its
16 fullest extent to address the issue of accounts balance.
17 The issue looms as a hammer over the heads of all
18 electrical users, restaurants, retailers to include both
19 small and large businesses. If that hammer drops at some
20 future date it is anticipated that the impact will be equal
21 to or greater than the devastation suffered by many
22 San Diegans this past summer. So we urge you to exercise
23 your power and authority to deal with the account balance
24 issue in a fair and equitable way. Thank you for an

1 opportunity to address you.

1 CHAIRMAN HOECKER: Thank you. Mr. Thomas Wolf.

2 MR. WOLF: Douglas Smith, James Hoecker, William

3 Massey, David Boergers, I address you individually and

4 collectively. Call me a concerned citizen. The ruling of

5 FERC that eliminates the ability of California's Power

6 Exchange and Independent System Operator to set wholesale

7 power caps is unacceptable. Also, instead of a soft cap of

8 \$250, a hard cap of \$150 should be set.

9 Your ruling reversing California's effort to

10 conduct power sales in an observable market is very

11 unacceptable. These need to see the light of day. We are

12 entitled to know.

13 Representative Bob Filner, Democrat, San Diego,

14 has recently introduced legislation providing FERC with the

15 authority necessary to order refunds of rates paid by

16 San Diego Gas & Electric customers. Once this legislation

17 is enacted, it will be your legal obligation to order

18 refunds. It is already your legal obligation to fully

19 investigate Duke Energy, Reliant Energy, Williams Energy,

20 ADS, Dynegy, Southern Energy. Also, Enron and Sempra

21 Energy need to be investigated properly, gentlemen,

22 properly.

23 This includes the issuing of the appropriate

24 subpoenas and taking of any relevant depositions which you

1 have failed to do. You also have before you a motion filed

1 by the California Public Utilities Commission that would
2 require six of the aforementioned companies to detail their
3 profits and provide other financial information to CPUC in
4 order to aid in their current investigation.

5 It is your legal, ethical and moral obligation to
6 open up this investigation. The anti-competitive practices
7 of collusion, price fixing and market manipulation utilized
8 by these companies are in direct violation of federal
9 antitrust laws. You are all lawyers, you know this.
10 Energy deregulation has been nothing more than a veil from
11 behind which these companies have hidden the most obvious
12 blatant energy theft of money in San Diego County history.
13 This money must be returned to the customers from which it
14 was stolen, and the perpetrators of this hoax need to be
15 tried, convicted and sent to jail. We do not need some
16 whitewash investigation with no one held accountable.

17 It is time to stop passing the buck, gentlemen,
18 and truly work in the best interest of the good of the
19 people you represent, the law-abiding Americans who pay
20 your salaries. We are your boss. With our hard-earned tax
21 money paid in good faith. Remember us? This country was
22 formed because of the oppression of a system that promoted
23 taxation without representation. Or have you lost sight of
24 that fact in all your bureaucracy? Many great men have

1 died to form this country and preserve what it stands for.

1 Do not desecrate their valor and risk future civil revolt
2 by failing to do your duties. Accountability must be
3 enforced. Anything less is simply unacceptable.

4 Let me offer an analogy. I will address
5 Mr. Hoecker, since he is Chairman. How would you feel,
6 sir, if the next time you walked to your car, someone put a
7 gun to your head and kidnapped you, took you to an
8 undisclosed location and demanded \$2 million from your
9 family? After receiving the \$2 million and releasing you
10 unharmed, the FBI did an investigation and they caught this
11 individual and they said, yes, he did it. And they told
12 you and your family, well, yeah, what he did was unjust and
13 unfair, but he gets to keep the money. And there's no
14 punishment for what he did, but they will pass a law that
15 will hopefully prevent him from doing it again in the
16 future.

17 Gentlemen, it is not your function to prostitute
18 yourselves to large energy companies. To this date, the
19 actions of this committee, this commission are absolutely
20 disgusting and pathetic.

21 CHAIRMAN HOECKER: Thank you. I take your
22 point.

23 Mr. Gary Vyne.

24 He is not here. David Tynan.

1

MR. TYNAN: It's Richard Tynan. It's a

1 misprint. I am from Borrego Springs and own a small
2 business, employ 10 employees. One thing about Borrego, it
3 is the only desert community in San Diego County. In my
4 business, our electric rates went up very high. I cut my
5 consumption by 25 percent by turning down refrigerators.
6 My bill has gone up 300 percent. If this is going to be
7 the way, if deregulation works this way across the United
8 States and you get a 3- to 400 percent increase nationwide,
9 a gallon of milk will cost consumers 12, \$13, a loaf of
10 bread, \$8. A Ford or Chevy will be a luxury car at
11 \$80,000. The consumer cannot handle this type of
12 increase.

13 In Borrego Springs, we are sitting at 118
14 degrees, air conditioning is a must. We have to keep our
15 bodies cool to keep our tempers down. That is why we are
16 here to tell you, we are mad, we want you to do something.
17 The American people, if this happens across the United
18 States, this country will be in a depression. You
19 gentlemen will have created a depression if you do not do
20 something to keep this under control. Thank you.

21 CHAIRMAN HOECKER: Thank you. Mr. Michael
22 Gorfain? Did I say that right?

23 Bud Fischer.

24 MR. FISCHER: Yes, Mr. Chairman, members of the

1 Commission. I am Bud Fischer and I am a property owner.

1 Two of the properties that I own are single-room occupancy
2 hotels, developed with the help of HUD and the
3 redevelopment agency in San Diego. The hotels are totally
4 controlled by rent based upon moderate and low income
5 numbers from HUD. Unfortunately, each of the buildings
6 have over 200 rooms, which include over 240 tenants per
7 building. At the time they were constructed, we
8 master-metered each building, therefore, we are in the
9 110-120 kW rate. Last month we paid, in October, over 18
10 cents on peak demand. Our bills for the four months of the
11 summer went from \$24,000 roughly in the year prior to
12 \$47,000. That would equate to approximately \$60,000 a year
13 additional utilities. Our tenants are all low- and
14 moderate-income and seniors. Because we are, have
15 subsidies, we are locked in on rental rates. So we can not
16 increase these rates. Therefore, it's creating somewhat of
17 a havoc on our operating profits.

18 In addition, we have another that is 207 rooms
19 that is very low income. Our bills have doubled there.
20 Since we are unregulated there, we are at least able to
21 increase the rates, but the tenants who are paying 3- or
22 \$400 a month will face large increases. Had each tenant
23 had an individual meter, we would have been paying a third
24 of that bill. They said well, it's a legislature problem,

1 talk to your legislator, we can't do anything bit.

1 The other issue this causes on both our property
2 and others are property owners. Loans come due, and all of
3 a sudden, you have an additional 60- or \$70,000 in
4 expenses, then the value of your property decreases by
5 800,000 or a million dollars. Then of course the loan
6 amount increases, and when you renew the loan, you may be
7 in a position of having to come up with several hundred
8 thousand dollars in order to keep it or be foreclosed
9 upon. We also have large apartments where the bill went
10 from 5- to \$12,000 a month. That was 50 percent of the
11 rent.

12 We have a small restaurant that has about 1500
13 square feet, pays \$1600 in rent. Her utilities went last
14 summer from 6- to 1600 a month. That is probably all of
15 her profit, if not more. So you can see this goes on and
16 on. We had 14 restaurants as tenants. All are suffering
17 drastically, which could bring about closures if this
18 continues. And closures bring about foreclosures. So I
19 would wish you would look at these numbers and do something
20 to make it palatable to the commercial businesses and
21 low-income providers.

22 Thank you.

23 CHAIRMAN HOECKER: Thank you, sir.

24 I believe we have got some extra time at this

1 point. I want to thank the panel for a series of excellent

1 presentations and want to thank you for stepping up to the
2 plate, so to speak.

3 I would like to open the mike to anyone in the
4 room who would care to address us at this time. The
5 Governor is due in a little bit, but we have a little time
6 on our hands.

7 Thank you, gentlemen.

8 Please identify yourself for the record. Spell
9 your name if necessary.

10 MR. BELL: Hi. My name is Bill Bell, with U.S.
11 Venture Labs. Wow, what a mess. A couple things I would
12 like you to consider as you make decisions that will affect
13 the outcome of San Diego residents in particular,
14 California in general. Right now, we don't have very many
15 ESPs who are actively marketing and trying to create an
16 environment for retail customers. What we are left with is
17 PG&E to, in essence, procure energy on our behalf. They
18 had no opportunity to engage in long-term contracts,
19 therefore reducing price volatility that we unhappily enjoy
20 here in San Diego.

21 I would really encourage you to rethink an ESP
22 role in this deregulated market such that if they can
23 engage in pure unfettered competition, therefore reducing
24 rates to end-use customers. Had that consideration been

1 given and thoughtfully executed, a lot of the problems that

1 have been seen over the last six to 12 months probably
2 would not have occurred, or been minimized to some degree.
3 Again, I would like to encourage you to rethink the retail
4 side of the market, give the ESPs an opportunity to provide
5 a better product than what is currently being provided by
6 the utilities, and support those efforts.

7 Thank you very much.

8 CHAIRMAN HOECKER: Thank you. One thing you
9 might want to think about is how we get those ESPs in those
10 markets when the rate freeze is up. You can always comment
11 for the record. Thank you.

12 Next?

13 MR. HOFFMAN: Thank you. I am Byford Hoffman,
14 B-y-f-o-r-d, Hoffman. I am representing today Midwest
15 Energy. Midwest Energy is an ESP, one of the very few ESPs
16 still trying to do retail business in California. We do
17 not own any generation. The only way we are able to do
18 business is to talk to a customer, figure out what kind of
19 price and terms make sense to them, then go buy the energy
20 in the wholesale market and try to match the terms of the
21 purchase with terms of the sale we have just made.

22 I did not intend to speak here today. We
23 generally try to do business, take the rules as we find
24 them, try to figure out a way to do business, what makes

1 sense for ourselves and the customers as opposed to coming

1 in and trying to write the rules.

2 But I did listen on the Internet to your hearing
3 in Washington, D.C. and came here to listen today. I would
4 like to emphasize two points:

5 One, in the hearing in Washington, D.C., you
6 asked a question about price responsive demand. I think
7 the general nature of the question was whether there is
8 anything FERC can do with respect to price sensitive
9 demand, or whether that is purely within the jurisdiction
10 of the California Public Utilities Commission. I believe
11 we are the only energy service provider in California today
12 that does have a price responsive demand deal with the
13 California ISO. We got together with a supplier of
14 technology who was able to do some real-time metering and
15 sent some price signals. We got together with a customer,
16 and I believe the name of the customer is public now, it's
17 Cal Portland, who was able to -- not all customers are able
18 to cut demand in response to price signals, but this
19 particular customer was. And we did a deal that involved
20 having the ability to shed 13 megawatts of load, as
21 demanded by the ISO.

22 That is enough, in effect, what is the equivalent
23 of enough new generation in the California market to serve
24 several thousand residential customers in San Diego.

1

I think the importance of giving additional

1 consideration at the ISO level to demand responsiveness is
2 that I think we are better able to react creatively to the
3 situations as they exist. And for example, we have some
4 customers where we have gone out, we have offered them a
5 fixed price, we have gone out, procured a supply to, and
6 essentially hedged the risk of serving that customer. The
7 prices go up. In some cases, we have gone to customers and
8 said to the customer, what, at what strike price would you
9 be willing or able to cut your demand and allow us to take
10 that energy that we have acquired to serve you, and put
11 that into the market at whatever the market price happens
12 to be.

13 The customer gets a strike price. We split the
14 difference with the customer. The customer wins, we win
15 and California wins, because that is additional supply that
16 wouldn't come into the market.

17 So I think most of the responses that you got in
18 Washington said, no, demand side is really the purview of
19 the California Public Utilities Commission. I would urge
20 you to not dismiss demand responsiveness out of hand.

21 The second point I wanted to make has to do with
22 respect to forward contracting, and what I would like to
23 ask you to do is to be sensitive to the potential that
24 forward contracting has to lock in existing customers to

1 the default utility and, in effect, kill the retail market

1 in the future if it would develop.

2 As you know and as has been pointed out to you
3 several times today, if you lock in a price forward, you
4 can lock it in at a level that seems high in retrospect or
5 low in retrospect. California has a lot of experience with
6 that. A large chunk of the stranded costs customers have
7 been paying in California is a result of the QF contracts
8 that were entered into, based on the assumption that oil
9 was going to go to \$100 a barrel. You spread out the price
10 over 20 years. What you thought was going to be reasonable
11 ends up unreasonable.

12 If you lock in the prices right now, if those
13 prices in retrospect end up being high, then large
14 customers that have the ability to leave will leave and the
15 small customers will end up paying a disproportionate share
16 of those.

17 CHAIRMAN HOECKER: Sir, you have had a lot to
18 say. You really should be writing this down for us. Could
19 you wrap it up?

20 MR. HOFFMAN: Yes. If the price in retrospect is
21 low, then you, in effect, have killed the retail market.

22 So the two points I would like to leave you with
23 is one, pay attention to demand responsiveness; and two,
24 pay attention to the effect of locking in high prices on

1 the developing retail market.

1 CHAIRMAN HOECKER: Thank you very much. Our next
2 presenter, please.

3 MR. WALKER: I am Richard Walker, a ratepayer in
4 San Diego, north county. I will simply read to you, read
5 for the record the letter I sent your secretary on November
6 9.

7 "Sirs, it is inconceivable the differential in
8 energy consumption in California, summer 2000 versus summer
9 1999 was so great as to cause a 500 percent increase in
10 electrical energy pricing to ratepayers. The producers
11 unquestionably took advantage of a poorly conceived and
12 written deregulation, and the ratepaying victims, with
13 usurious wholesaling prices, to reach huge if not immoral
14 windfall profits. If you cannot see the dilution and
15 corporate greed here in regulating the industry, you are
16 not fit to sit on the Commission.

17 On the other hand, if the producer can prove it
18 costs them five times as much to generate a kilowatt this
19 year over last year, or justify in any other acceptable
20 manner their price gouging, I will back down and
21 apologize. But I doubt that I will have to do that.

22 If you have been regulating as you should have,
23 you should have seen this coming and taken some combined
24 action with our CPUC. If you cannot impose, or if you can

1 impose refunds against unwarranted rate increases since

1 October, as reported in the press, your unwillingness to
2 impose refunds for the ceiling high rates in May, June,
3 July and August leads to an unsatisfactory conclusion. I
4 think the foxes are guarding the henhouse. Thank you.

5 CHAIRMAN HOECKER: Thank you. Next, please.

6 MR. FIDDELKE: Yes, good morning. My name is
7 Stan Fiddelke. I am on the board of directors of one of
8 the chambers of commerce, restaurant owner and ratepayer.
9 Besides issues already presented today, I would like to
10 urge you to act swiftly to roll back future costs and
11 demand retroactive rebates, but also to recognize for a
12 large portion of many of the small and medium consumers,
13 business consumers in large sections of this county have
14 basically only one source of power, electrical. We don't
15 have natural gas capabilities. So this is, has forced us
16 to not be able to take advantage of the 6-1/2 cent cap loan
17 that the state has offered us -- deferment, if you want to
18 call it. Six months of dysfunctional process, a large
19 number of members of our group, small business group is
20 slowly bleeding to death.

21 2- to 300 percent cost increases, number one,
22 cannot be passed on to the customers, forced us to make
23 unrealistic choices as to use of our assets, either pay
24 energy bills or use college funds, vacation savings,

1 retirement savings, and created an unfair competitive

1 advantage, not only within the state on top of San Diego
2 versus Los Angeles or northern California because they have
3 had the luxury of not having to suffer with this for
4 another year and a half or two years, but also within
5 business classes within our own county.

6 Last but not least, number four, we have no
7 reasonable means to mitigate this. We can not get direct
8 access bids, as the previous gentleman was referring to.
9 We have sent out, just as a chamber with 500 members, 16
10 ESP providers. We have got yet to get one realistic bid
11 back. The closest was three times '99 levels, and that has
12 forced us all individually and collectively to be in a crap
13 shoot position, stuck with our rates heading up or down and
14 where do we want to pay the piper.

15 I urge the Commission to act now to provide the
16 leadership to solve this calamity and political ping-pong
17 game. Thank you.

18 CHAIRMAN HOECKER: Thank you. Do we have any
19 other speakers this morning?

20 My understanding is that the Governor is moments
21 away from here and we will, if you wouldn't mind, just kind
22 of stay in place until he arrives, that would be very
23 helpful. Then we will conclude our hearing.

24 (Recess.)

1

CHAIRMAN HOECKER: Let's go back on the record

1 this morning. Our last panel, we are very honored to have
2 the honorable Gray Davis, Governor of California, Loretta
3 Lynch, president of the California Public Utility
4 Commission, Michael Kahn, chair of the California
5 Electricity Oversight Board, and I think Bill Keese is here
6 as well, chair of the Energy Commission. They should be
7 entering the room shortly, I am told.

8 GOVERNOR DAVIS: Good morning.

9 CHAIRMAN HOECKER: Good morning, Governor.

10 Please be seated. The Commission is very honored to have
11 you attend our hearing here in San Diego. It's been a very
12 productive session this morning. We have heard a great
13 deal about the economic dislocation to the individuals and
14 economy of Southern California caused by the electricity
15 crisis. We know you are very focused on this, and thank
16 you for your attention and leadership on this critical
17 issue for the state and the nation. We look forward to
18 working with you, with the CPUC and other parts of state
19 government to help address this issue for the benefit of
20 the ratepayers of the state.

21 Governor, we will turn it over to you.

22 MR. DAVIS: Thank you, Chairman, and Commissioner
23 Massey, for coming to San Diego, and thank the Staff for
24 their hard work and preparation for the hearing. I think

1 you know Loretta Lynch, president of the Public Utilities

1 Commission, on my right, and Michael Kahn, head of the
2 Energy Oversight Board, on my left, and Bill Keese, who is
3 Chairman of the Energy Commission, California Energy
4 Commission. They will all be happy to answer questions and
5 respond to any concerns you have.

6 Thank you for coming to San Diego and hearing
7 firsthand again the impact of deregulation on San Diego
8 consumers. I won't repeat what I am sure you have heard
9 before, but let me say that I do believe there are serious
10 flaws in the energy market of California. You have found
11 that the market is dysfunctional and you have found rates
12 are not reasonable and just. I want to comment today on
13 two points in particular.

14 First, I believe given your findings, that the
15 marketplace is dysfunctional and that the rates are not
16 reasonable and just, that you must order refunds. We
17 believe you have the power to do it. We think it's
18 imperative that you do so. If you don't do so, what is the
19 purpose of making those findings in the first place? Keep
20 in mind, I believe deregulation can work eventually if the
21 marketplace is protected and if all parties act
22 responsibly, neither of which has happened today. In those
23 circumstances, I believe relief is in order, and I believe
24 you should act forthwith.

1

The second thing I would ask you to do is to

1 impose hard price caps and bid caps that will protect
2 consumers from another hot summer until the marketplace
3 becomes competitive. Again, I believe deregulation can
4 work. But we have begun it in a state where there is a
5 major deficit between supply and demand. It will be four
6 to five years at best until those lines level off. The
7 amount of pain that will be experienced over those four or
8 five years will be extraordinary in California, and I think
9 totally unwarranted.

10 Let me make, give you an example of the
11 astronomic cost to the state of the impacts in the year
12 2000. In the third quarter alone, the Wall Street Journal
13 reports that \$6 billion in profits were shipped out of
14 California for the very same electrons we bought last year
15 at considerably less price. As you know, you can't add
16 value to electrons. The total amount of electricity
17 consumed in 2000 was slightly less than 1999. So given all
18 the other irregularities, there is no justification in my
19 mind for those extraordinary profits. I want people to
20 make money, want them to honor their obligation to
21 shareholders. But I do not want them to bring California's
22 economy to its knees. I suggest that is what will happen
23 unless you act.

24 One example. On September 2nd at midnight, the

1 price this year was \$105 per megawatt-hour, four times what

1 it was the year before. Now, your proposed price caps,
2 Chairman Hoecker, it would be six times what it was in 1999
3 at midnight on September 2nd. If that is not a
4 dysfunctional market, I don't know what is.

5 Obviously, people in San Diego and I personally
6 believe this as well, believe that the marketplace is
7 manipulated to generate obscene profits. Again, I believe
8 in people making money, I believe in the marketplace to
9 solve those problems, but there has to be a competitive
10 environment for that marketplace to function effectively.

11 Now, I signed legislation which I called rate
12 stabilization legislation, that will level the impacts of
13 these increases over a substantial period of time in the
14 belief that rates will come down at some point and allow
15 utilities to be made whole, sending a clear message to
16 credit markets that we intend to honor our obligation to
17 consumers without sticking it totally to the consumers.
18 That is frankly the genesis or basis of a long-term plan
19 that we have developed. We are not fully prepared at this
20 point to discuss it in detail, but the whole idea would be
21 to level the process off four or five years while we
22 continue to build plants, putting the marketplace into a
23 competitive situation and then allow deregulation to work.

24 The rate stabilization plan I signed, which was

1 the work of Dede Alpert and Susan Davis, responds to

1 that -- contemplated refunds you have heard which, as of
2 this point, are not forthcoming.

3 So again, I ask you to use your authority to
4 issue refunds. I cannot imagine how you can make the
5 findings you have without remedy. If your rates were going
6 up 300 percent without relief in sight, you would want a
7 remedy. You don't want just nice talk, you want some
8 remedy so you believe FERC is not just looking after the
9 interest of generators and utilities, but also consumers,
10 which are also part of this process. In addition to my
11 concern about refunds, I do want to stress my strong belief
12 that we should, you should impose wholesale price caps as
13 we approach the summer of 2001. At the moment, you have
14 not done that. You have also stripped the California ISO
15 of the authority to impose any future caps of any kind
16 after tomorrow. After tomorrow, they have no authority to
17 protect California consumers in the summer of 2001 or
18 beyond.

19 So in effect, you have gutted the ISO's ability
20 to protect consumers against volatile wholesale prices.
21 Instead, you have ordered what I believe is a completely
22 untried approach, making any will -- of California, yet
23 another reckless deregulation experiment. But this time,
24 you have eliminated the protection of wholesale price caps,

1 which will leave consumers and businesses helpless in the

1 face of more profiteering next summer. In short, your plan
2 will make things worse next summer, not better.

3 Mr. Chairman, I ask again you modify your order
4 so you impose price and bid caps on wholesale electricity
5 to California consistent with the action the California ISO
6 took two weeks ago. They adopted a low differentiated
7 price cap approach which lowers prices when demand is low
8 but allows higher prices when demand increases. This is a
9 common sense approach that provides some protection to
10 consumers, and also provides the financial incentives for
11 generators to build new plants.

12 And to illustrate that point, during the time the
13 wholesale price caps have been in effect in '99 and 2000,
14 16 new applications for power plants were filed with the
15 California Energy Commission. All those applications have
16 moved forward. As I speak to you, five of those facilities
17 are under construction, and those applications total 9000
18 megawatts of power. That is clear evidence that it is not
19 necessary, Chairman Hoecker, to subject California
20 consumers to even higher prices in order to stimulate
21 development of new generation. Frankly, that is my
22 assessment of what you are trying to do. You think we will
23 not get these plants on line. I don't blame you, given the
24 history of this state the past 10 years.

1

I want to cite what we have done to show good

1 faith. Over the last, actually, 12 years, two Republican
2 administrations I believe involved in two of those years,
3 it is true no action was taken to build facilities or to
4 encourage them. But recognizing the need to do so, we are
5 moving full speed ahead. I sponsored and signed
6 legislation this year which is accelerating the siting of
7 new generation, streamlining the permitting process and
8 expanding programs to reduce peak demand.

9 To be specific, we have reduced from a year to
10 six months the time the Energy Commission has to complete
11 its process to site a new plant. We have also established
12 the Governor Clean Energy Green Team, bringing state and
13 local officials together to resolve problems and act as
14 advocates for siting a permit.

15 The state has appropriated the \$50 million from
16 the general fund to finance these efforts. In addition, we
17 have extended for 10 years the public benefit charges that
18 contribute \$500 million a year for renewable energy
19 sources, demand reduction and energy efficiency. In
20 addition, by executive order, I require all state
21 facilities to substantially reduce electricity during stage
22 2 energy alerts. That resulted in a peak load reduction of
23 180 megawatts this summer. Next year, at UC and CSU,
24 systems will follow suit, providing another 50 megawatts of

1 reduced load.

1 As you know, Secretary Richardson has announced
2 plans to follow suit -- in short, the state, consumers and
3 businesses are working together to develop new generation
4 and to reduce demand without exposing California to public
5 health risks and environmental degradation.

6 Now, we agree with some of your recommendations.
7 I don't want you to think this is a no vote. We do agree
8 the structure of the ISO and Power Exchange should be
9 changed. We have been considering ways to do that. We do
10 think the state board presents inherent conflicts and
11 should be eliminated, and agree that a greater proportion
12 of energy purchased by utilities should be in the form of
13 long-term contracts that provide a hedge against high
14 wholesale spikes. But we strongly believe, Chairman
15 Hoecker, that these changes should be made by Californians
16 through regulations and statutes subject to input by all
17 sides, rooted in accountability. These issues, decisions
18 must not be left to technocrats that do not live in
19 California nor are accountable to California.

20 That is my major complaint with the ISO.
21 Together, they make decisions that affect price and
22 availability of electricity supply. The ISO in particular
23 decides where shortfalls will be allocated, but there is no
24 elected official on those boards, there is no one that

1 Californians can hold accountable if they don't like the

1 actions those boards take, yet they directly affect the
2 quality of life and vibrancy of our economy.

3 I believe strongly the state should have the
4 right to determine the composition of those boards, and
5 those boards should include people who are directly
6 accountable to Californians. I don't have to remind you
7 that lots of people are watching this deregulation
8 experiment in California, some have paused to see what will
9 happen, others are yet to decide whether to -- I believe
10 also if we act carefully to protect ratepayers from the
11 ravages of a dysfunctional marketplace, this experiment
12 will end.

13 Let me make it really clear to you what I am
14 saying. Your proposed solution to our energy crisis does
15 nothing to lower prices for California consumers. Quite to
16 the contrary, it is designed to bring our economy and
17 consumers to their knees. Understand this. If that is
18 your final solution, I predict you will spark a ratepayers'
19 revolt. In my opinion, the citizens of California will
20 flock to the ballot box and strip you of your authority to
21 deregulate our electricity.

22 In conclusion, I think it's imperative, Chairman
23 Hoecker, you find a way to nurse this marketplace into
24 equilibrium so there is a competitive marketplace in which

1 deregulation can function. Otherwise, the economic

1 consequences over the next five years will be so severe
2 that ratepayers will take matters into their own hands. We
3 have an initiative process in the state, I believe you have
4 heard of Prop 13. People do what they think they have to
5 do in order to improve the quality of their life. I am not
6 saying I would join them, I am not saying I would oppose
7 them. I am just saying you should be aware consumers have
8 remedies if you don't provide them remedies under your
9 statutory authority.

10 I believe strongly that you have the authority to
11 provide remedies for this difficult summer that San Diego
12 in particular experienced, and remedies to prevent the
13 calamity that occurred in San Diego from occurring
14 statewide over the next three or four years, which I am
15 convinced will occur, absent some effort to soften the
16 inequities of the marketplace.

17 So that is my point. If you focus on getting
18 more plants on line without any concern for its impact on
19 consumers, all hell is going to break loose. You have no
20 idea what is going to happen. You can sit in Washington
21 and think this is simply a matter of this process can be
22 driven entirely by formula 3000 miles away, but when
23 people's bills go up dramatically, they decide to take
24 action. The San Diego Tribune, which never endorsed a

1 Democrat in its life, attacked me for not spending \$150

1 million to bail out the consumers in San Diego. So that
2 proves my point, economics follows politics, not the
3 reverse.

4 CHAIRMAN HOECKER: Thank you very much. I
5 wouldn't want for you to think or the record reflect this
6 commission believes there is any single answer here.
7 Certainly, that building plants and transmission lines is
8 by itself a complete solution to this very difficult
9 problem. We are looking for balanced solutions, we are
10 looking to take into account certainly your views and the
11 views of all the residents of San Diego who have spoken
12 today, and ensure that the federal response is, number one,
13 one that the state of California can work with; and
14 secondly, that it is a balanced response that benefits
15 consumers.

16 I would say, you mentioned a plan to nurse the
17 market back to equilibrium over a period of four or five
18 years, and that that plan is under development. Might I
19 ask, sir, whether we might expect some details about that
20 in the record of this proceeding before next week, would
21 that be possible? We would like to be able to take it into
22 account as we make our decisions.

23 GOVERNOR DAVIS: We will make every effort to
24 make that available to you as soon as possible. Obviously,

1 this is a collaborative effort. I share that with the

1 business leaders, we have had a number of discussions with
2 the business community and consumer groups. I cannot
3 guarantee we will have that to you next week. I think we
4 can have it to you by the time you meet next to this issue,
5 which I believe is December 13th in Washington.

6 CHAIRMAN HOECKER: December 13th. At least there
7 is a strong possibility we may be taking some final action
8 in this proceeding. We would like to be able to take into
9 account your ideas, and those of the CPUC and oversight
10 board, as we think through those policies and begin to
11 draft this particular order.

12 GOVERNOR DAVIS: Let me talk off the top of my
13 head with my staff here, but I think we can get you a plan
14 by, say, December 1st. That would give you at least 12
15 days to look at it before you act on the 13th. Obviously,
16 we would be available to come back to share with you
17 informally or formally, however you think appropriate.

18 CHAIRMAN HOECKER: Sure. Good.

19 GOVERNOR DAVIS: My hope is that you would allow
20 us to solve the problem. My fear is if you solve the
21 problem you will not fully appreciate the economic harm
22 occurring here and won't solve it in a way I would.
23 Clearly, you have to do your job as you best determine it.
24 But those of us who are elected are keenly aware of the

1 need for a balanced, well thought-out plan that speaks

1 directly to our situation.

2 Other statements that have -- I was speaking to
3 the Governor of New Hampshire about this about three months
4 ago. She believed, at that time at least, that she had an
5 excess of supply. That is an entirely different
6 environment. But my fear is that you believe we will not
7 move fast enough to site additional plants and will make it
8 even more attractive for investors by allowing even higher
9 rates to be passed on to consumers.

10 My point today is to convince you we have already
11 got 9000 megawatts of power applied for, five of the 16
12 applications are actually in process of construction. The
13 balance, 11 other applications remain. So under the
14 existing financial incentives, 9000 additional megawatts
15 has been applied for and is in the process of being
16 approved. So we understand the need to put new plants on.
17 We also understand the need to temper the impact on the
18 consumer, spread it out over time so that they can go about
19 their lives and so California's economy can go forward.

20 CHAIRMAN HOECKER: Those are all excellent
21 thoughts. I concur that, well, let me say that if I were
22 in your shoes and I believed that the FERC were dedicated
23 to keeping prices as high as possible to attract
24 generation, I would be fearful as well. I think our goal

1 here is a functioning market that will reduce rates for

1 California, not just below last summer's, but below the
2 historic levels of rates in the state prior to the 1890.

3 What we are looking for, in addition to
4 correcting the flaws in this market and help consumers reap
5 the benefits of competition, and not the risks of
6 competition is a recognition that California is also part
7 of a larger regional marketplace, that California's only
8 solutions at some point cease to replicate the operation of
9 the system in a productive way. We need to work to mesh
10 the goals of the state of California and of your energy
11 regulators with the goals and objectives and needs of the
12 interstate marketplace as a whole. And I think that while
13 we have made some strides, we clearly both have a
14 tremendous amount of work to do at the retail level, the
15 wholesale level and at the interface between those two
16 marketplaces.

17 I completely share your objectives that we need
18 to make electricity rates in California reasonable and
19 attractive to consumers as well as to sellers.

20 GOVERNOR DAVIS: I concur with your goal, but I
21 think you would agree with me that in the short term, rates
22 are going up, not down. It's going to be -- do you
23 disagree with that? You look forward to next summer, what
24 do you think is going to happen?

1

CHAIRMAN HOECKER: I think we have some major

1 challenges in front of us in the next couple of years due
2 to the lack of generation, no question about it.

3 GOVERNOR DAVIS: Frankly, my best guess is, we
4 are looking at probably four years, under the best of
5 circumstances, to get all the generation on line that we
6 need to bring the marketplace into balance. What I am
7 saying to you is it's not fair to ask the ratepayers who
8 were promised rates would be down, to cope with ever-rising
9 increases in rates, at least for the next four or five
10 years, in the hope at that point, they would start to level
11 off and go down. We have to find some way to level that
12 off. If you had told people we are going to have a
13 deregulated market and guess what, generators are going to
14 make 6-, 700 times profit, recoup investment in a year and
15 rates are going up five or six years, you wouldn't get too
16 far. People would say thank you, but no thank you, we
17 don't need to hear from you again.

18 That is not what you said, but the theory was
19 things are going down. I think we have to be mature enough
20 to say this plan is flawed, in part because of mistakes
21 made under prior administrations in California and mistakes
22 made at the federal level. My fear is that your proposed
23 solution is going to increase the pain consumers feel, not
24 reduce it, for at least a four- or five-year period. I

1 would like you to speak to that because that -- people give

1 me a charge to function for four years. I don't have a
2 lifetime charge.

3 CHAIRMAN HOECKER: The Commission believes that
4 the order we are contemplating now is the beginning, not
5 the end of this process. There are many, many things that
6 we address in this order. We need to balance the interests
7 of California and the region in developing a vibrant
8 market.

9 We also need to take into account the very, very
10 serious dilemma energy consumers in San Diego and elsewhere
11 in California face right now.

12 And the solution here is not to allow electricity
13 prices to escalate out of control. I believe, as I think
14 you are suggesting, that that would be an abdication of our
15 public interest responsibility. On that, I firmly believe
16 that just and reasonable rates are very important. I think
17 this market was dysfunctional. I think that we moved very,
18 very quickly to implement 1890 in ways that, though we
19 might have had apprehensions about it in the beginning, was
20 highly deferential to California, and it didn't work. You
21 need to help us fix it and we need to help you fix it. I
22 think that the end result here has to be, not just in the
23 long run, but in the reasonably foreseeable future -- these
24 historically high levels of electricity prices.

1

GOVERNOR DAVIS: I may be beating a dead horse

1 here, but I think San Diego ratepayers would be thrilled if
2 they could have their historically high prices back again.
3 That is the problem, I perceive a substantial period of
4 time where the prices of last year will look attractive
5 compared to the year after and the year after. And it's
6 imperative that we don't, you know, allow Californians to
7 go naked in this battle. Price caps play something of a
8 temporary role. Now you are saying the ISO can't have any
9 more price caps of any kind, you just totally put them out
10 of the business of price caps and you have the soft \$150
11 price cap and I told you what the impact of that would have
12 been last December at midnight, because these caps tend to
13 be a minimum as well as maximum. People tend to bid right
14 at or near the cap. So that is a soft cap, if you can
15 prove you get a higher rate someplace else, it's higher
16 than \$150. It's not that I doubt your motives, I just
17 don't see a work product that says we are going to make
18 life better next summer.

19 CHAIRMAN HOECKER: Clearly, this commission has
20 work to do. It referred to the historically high rates
21 that San Diegans and others don't want anymore, I was
22 referring to last summer. Believe me, the rates that
23 existed before 1890 weren't very palatable either for the
24 economy or individual citizens. We need to work on it. We

1 need to work on it very hard.

1 I will study your views on the operation of the
2 soft cap, but I don't think the soft cap operates quite the
3 way you expect it to. But this isn't over yet. We haven't
4 written this, we haven't carved this on a rock. We are
5 taking views and will evaluate the costs and benefits, the
6 operation of these proposals as we go forward. And even
7 after we issue our order, we consider it step 1 in a
8 process that is going to involve your CPUC, that is going
9 to involve hopefully you, Governor, and other state
10 officials in trying to reach a market that will benefit
11 your constituents.

12 I feel strongly that that is our purpose for
13 existing. I feel equally strongly that we can help
14 delivery -- with all due respect, there are serious
15 limitations in our statutory authority. We would love to
16 have some help from the U.S. Congress. But we are going to
17 do everything we possibly can within the authority as it
18 exists today to help California consumers climb out of this
19 unfortunate circumstance.

20 GOVERNOR DAVIS: You clearly have the authority
21 to approve or deny proposed price caps by our ISO. Now why
22 won't you let us reconstitute the ISO and Power Exchange
23 ourselves and allow them to adopt some form of price caps?
24 You won't allow them to adopt any price caps.

1

CHAIRMAN HOECKER: I am not prepared at this

1 moment to say we wouldn't allow price caps. I think that
2 what we need to do is look at all the possible ways that we
3 can keep this highly volatile, erratic marketplace -- or at
4 least it operates that way during peak situations, we need
5 to find a combination of mechanisms for dampening that
6 volatility, for keeping prices down, for allowing consumers
7 to protect themselves, for allowing utility buyers and
8 industrial customers to enter into long-term contracts
9 that, frankly, were unavailable to them, very readily
10 anyway, until very recently.

11 Those are things we need to work on together. We
12 don't have all the answers, we don't have all the solutions
13 either as a matter of policy or matter of law.
14 Unfortunately, neither do you. But we can work together, I
15 think, in ways that are going to be very powerful and are
16 going to achieve results, not four or five years down the
17 road, but soon.

18 GOVERNOR DAVIS: From your mouth to these ears.
19 I just want to again register my doubt that your
20 proposed -- not my doubt, my strong belief that your
21 proposed rate order will not alleviate problems over the
22 next three or four years. I don't see any relief on the
23 horizon.

24 Not that you can't change the order, but your

1 order, from my perspective, calls for higher prices until

1 these new plants get on line. The California Manufacturing
2 Association was really the first to call for this in league
3 with the national effort to deregulate electricity. The
4 whole idea, they thought they were paying an unduly high
5 price for electricity. As of yesterday, only 1.8 percent
6 of our consumers in any category were taking advantage of
7 forward contracting or long-term arrangements.

8 So even business is not, has not availed
9 themselves in any substantial numbers of the opportunities
10 to minimize the prices they will pay. And of course the
11 consumer doesn't have that, the ratepayer doesn't have that
12 opportunity.

13 So I just want you to understand that I can't let
14 this happen. We will have to allow, have to resort to any
15 remedy available to us to make sure that California
16 ratepayers don't have to pay the price for the mistakes of
17 both California and federal officials pushing deregulation
18 before the marketplace was competitive. It wasn't -- they
19 didn't clamor for this change. This was basically pushed
20 by the California manufacturers. All of them will
21 [inaudible] but not at the expense of driving small
22 business into the ground and making ratepayers go for very
23 difficult choices as to how they use their disposable
24 money.

1

CHAIRMAN HOECKER: Governor, if this proposed

1 order is, recommends a solution for this problem,
2 ever-escalating electricity prices, I will be the first one
3 to vote against it.

4 GOVERNOR DAVIS: I don't mean to be unduly
5 prolonging this, but tell me why you think your proposed
6 order will cause rates to be lower next summer than this
7 summer.

8 CHAIRMAN HOECKER: It's a long-term solution.

9 GOVERNOR DAVIS: That means it won't.

10 CHAIRMAN HOECKER: Number one, I don't think that
11 there are -- that there is any single answer in this
12 order. I think there are a number of answers. There are
13 answers related to the increased availability of bilateral
14 transactions of forward contracting. People being able to
15 manage their own risk, of getting more transactions out --

16 GOVERNOR DAVIS: Which would involve metering,
17 which is a major undertaking. I am not saying it can't be
18 done.

19 CHAIRMAN HOECKER: For the bulk power market
20 where transactions, even transactions with large customers
21 in the wholesale market, this is all very possible. There
22 have to be clearly some state initiatives at the retail
23 level to accomplish what you are recommending. I don't
24 pretend to tell you that the FERC can address those issues

1 itself, or at all, if, frankly, we don't have jurisdiction

1 in the area that Ms. Lynch has jurisdiction.

2 But we think that this order will be a step in
3 the right direction, that there may be some other things
4 that we have. We have an overarching refund obligation in
5 place that we can now use to limit excessive rates that we
6 didn't have last summer, unfortunately, but we do now.

7 And we have more tools at our disposal, and
8 hopefully, this is going to be a far more manageable
9 situation as some of that generation you talk about begins
10 to come on line in July and August.

11 It is difficult for me to predict the future, but
12 I can tell you what our intent is and I can tell you what
13 we are going to work very hard to accomplish. And that is
14 more restrained, reasonable rates at the wholesale level.

15 Governor, I believe my colleague, Commissioner
16 Massey, has a question or two. So if I might.

17 COMMISSIONER MASSEY: Governor, let me just say
18 that I believe that Californians will revolt unless this
19 commission provides assurances that prices will be just and
20 reasonable and fair. One thing that this debate has taught
21 us, I believe, is that market-based approaches, to be
22 politically viable, must produce politically acceptable
23 prices. Now, there are those who don't like to hear that,
24 but I think that is the reality.

1

But let me ask you, because I want to be very

1 clear on this. In order to avoid the revolt that you
2 believe will come, what does this commission need to do
3 specifically? I heard you say we need to order refunds for
4 the past periods, we need a hard price cap similar to the
5 one that the ISO adopted a couple of weeks ago. Would that
6 be enough in your view?

7 GOVERNOR DAVIS: No, but it's clearly two steps
8 in the right direction. I think to go through next summer
9 without any price or bid caps is almost guaranteed that the
10 prices consumers pay will be higher than they were last
11 summer, which, again, is directly the opposite result that
12 was promised to ratepayers if we went into deregulation.

13 Beyond that, I think letting more bilateral the
14 purchases of power by utilities directly, either going
15 through the Power Exchange or going around the Power
16 Exchange, would make sense. I think allowing California to
17 put people on the ISO who are accountable to Californians,
18 so Californians feel there is some political remedy if they
19 don't like what the ISO is doing, would help.

20 And recognize, you want to hold us accountable.
21 We are asking the system be held accountable. You hold us
22 accountable, say, over a period of time, three or four
23 years, here are the benchmarks we expect you to meet in
24 terms of siting plants, and in return for that, we see

1 California is actually making progress by siting more

1 plants, we will allow you to develop plans that will
2 cushion the impact of the short-term increases, spread them
3 out if you will, so that there is not ratepayer shock and
4 revolt.

5 We would view -- and I applaud your political
6 sophistication in realizing people will not accept
7 intolerable prices. We all work, whether we recognize it
8 or not, we all function with the consent of the governed,
9 whether you are appointed or elected. You cannot adopt
10 policies that people are abjectly opposed to. They will
11 find some remedy, whether through the courts or the ballot
12 box. And I think sometimes, in the rarefied world of
13 Washington, generators and utilities worrying about rates
14 of return, as they should, and their stock and credit
15 ratings, what gets lost is the small business and small
16 ratepayer who is unprotected at the moment and bears the
17 full weight of rate increases. We, big businesses can
18 contract to protect themselves, but small businesses and
19 consumers cannot.

20 So there has to be some protection and remedy for
21 that.

22 COMMISSIONER MASSEY: Yes.

23 GOVERNOR DAVIS: I can't tell you, as I sit here,
24 I know all of them, but allowing us to reconstitute the ISO

1 and reconstitute the Power Exchange in concert with you so

1 they are accountable to Californians, some effort to hold
2 us accountable over an agreed-upon period of time to make
3 sure plants do in fact get on line, that investors are
4 pleased with the return they get, and most importantly,
5 some effort to spread out any future increases over a
6 sustained period of time so that there is not the revolt
7 which I predict, are the ideas that I would currently
8 recommend and if you would allow us to address them more
9 fully in the rate submission over the next few weeks, I
10 will do so.

11 The time frame I was on until we saw your order
12 was, a couple weeks ago, was prepare something for the
13 start of the legislative session. Whether we called a
14 special session, whatever we did to accelerate the
15 processes, those options prevailed. That was the time
16 limit I was working under until I saw your order a couple
17 weeks ago. Then I realized we had to accelerate our
18 timetable to comply with your timetable.

19 COMMISSIONER MASSEY: Yes. Just a couple other
20 points. I feel confident that you will assign your vast
21 attorneys and policymakers to give us your analysis of
22 federal law regarding our authority on refunds going back
23 over the summer, our office of general counsel has provided
24 a memorandum which doesn't conclusively conclude -- that

1 doesn't conclude firmly that we have no authority, but

1 says, essentially, it's likely that we don't.

2 But I must say, I have an open mind on the
3 subject, and I very much want to have your analysis on
4 that.

5 Number two, I am pleased that California is so
6 committed to the demand side, and I have been pleased with
7 what I have heard from witnesses today and what I have
8 heard from you and other commenters over the past few
9 months.

10 I also believe there is a federal role. I
11 believe the ISO must integrate a demand side market with a
12 supply side market and allow demand side aggregators to
13 essentially bid megawatts into the market. I think that
14 will mitigate high prices.

15 But what you are doing to achieve longer term
16 solutions is very important too. I want to applaud you and
17 commend you for that.

18 Let me express finally a sense of frustration
19 that we end up having to deal across the dais from each
20 other because of our ex parte rules. I wish there were a
21 way procedurally that we could sit in the same room and try
22 to work out many of these problems. Maybe there is a way,
23 simply to notice the meeting held in public, but have a
24 working session.

1

There may be other procedural mechanisms we can

1 use. I believe our Commission must explore those, because
2 we must have an open and free dialogue with you, given that
3 much of the responsibility is ours clearly, clearly we have
4 responsibility for the wholesale, wholesale and retail
5 markets merged together. And I know all of you recognize
6 California's responsibilities, too. You stated you do and
7 are committed to moving forward. But there has to be a way
8 to ensure our policies dovetail if possible.

9 So I wanted you to know that is on my mind and I
10 am open to any suggestions for how we can work together to
11 solve these problems.

12 CHAIRMAN HOECKER: Governor, we are going to give
13 you and your panelists the opportunity for the last word
14 before we wrap up.

15 GOVERNOR DAVIS: I think I have made myself
16 clear, Chairman Hoecker. We don't want to go through
17 another summer like we did in the year 2000. Under your
18 current proposal, order, I am afraid we will go through two
19 or three more summers like we did last summer, until there
20 are enough plants on line to bring supply and demand into
21 balance, in which case, I think deregulation can work if
22 the parties act responsibly. There is still some
23 marketeering and gaming by investment bankers. When I come
24 back in my next life, I want to be an investment banker.

1

But I do not want you to leave here with the

1 impression that we will stand idly by and hope you do the
2 right thing. The stakes are too high. Our economy, as
3 well as the ability of small businesses to function, is
4 beyond the line. You need to hear us, that whatever
5 mistakes were made on our part under previous
6 administrations or even my administration, we have to find
7 a way to solve problems. I don't believe appointed or
8 elected officials should be prisoners of ideology. We
9 should help people get on with their lives and solve
10 problems.

11 Deregulation, in theory, can work. It can't work
12 in our marketplace. To acknowledge it doesn't work as you
13 have and then say we are going to give you more
14 deregulation doesn't sound like the best way to cure the
15 patient. I think we need to put some of the curbs and
16 protections in place to buffer the impacts on consumers,
17 because it's going to be a bumpy ride for a while. It's
18 just imperative that the consumer and small business not
19 get lost while you are focused on the generators and
20 utilities. They deserve to make a profit. They have an
21 obligation to their shareholders. I am fully supportive of
22 that. Not at the expense of driving everyone else into the
23 ground. Whether we have to go to court or rethink the Act
24 of 1996, we are going to do something to make sure that

1 there is relief in the short-term, not just in the

1 long-term.

2 CHAIRMAN HOECKER: Well, I too don't think the
3 recipe is more deregulation. I don't think our order
4 amounts to that.

5 GOVERNOR DAVIS: Clearly, taking our tools away
6 from us. There is no question you have taken power away
7 from us. You are asserting we can't reconstitute the Power
8 Exchange and ISO, which we were intending to do, for some
9 of the same reasons you found in your proposal. We want to
10 deal with a way to make that body accountable to
11 Californians.

12 CHAIRMAN HOECKER: We have heard the citizens of
13 California and the pleas for urgency. And we want to act
14 quickly. We will be very respectful of your
15 recommendations and try to figure out how we can reach an
16 accommodation here. But we can act and we can act
17 quickly. We are the kind of an organization I think that
18 can help make a difference. I wouldn't want you to leave
19 here thinking that we are going to stand idly by waiting
20 for other people to provide the solutions. We think that
21 this is a jurisdictional public utility environment, and
22 that we have our responsibilities to the bulk power market
23 in California and the west.

24 We want to make sure that what solutions we come

1 up with work for California and work for your

1 constituents. I think that working together in the vein
2 that Commissioner Massey just suggested will produce some
3 great results. We look forward to that effort.

4 CHAIRMAN HOECKER: I think there is a legally
5 appropriate way to do that. I think Commissioner Massey
6 made a good suggestion, even if we are just talking about
7 across the table and everybody listening to what we are
8 saying, that at least allows some informal discussion and
9 that we try things and modify them.

10 I too agree we will make more progress if we are
11 jointly solving problems, rather than always in an
12 adversarial context. So if there is a legally permissible
13 way to do that, I think we ought to do that.

14 CHAIRMAN HOECKER: Great. You have my commitment
15 we will look for that solution. Thank you very much for
16 coming, Governor. We are honored by your presence here.

17 And thank you, Madam President and Mr. Chairman
18 and Mr. Chairman.

19 And I believe that concludes this meeting. Thank
20 you very much.

21 (Whereupon, at 12:36 p.m., the conference was
22 concluded.)

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